

1 WILLIAM BAKER, SBN 157 906  
Moreno & Associates Law Firm, APC  
2 2082 Otay Lakes Road, Ste. 102  
Chula Vista, CA 91913  
3 619-422-4885  
4 william.baker@morenoandassociates.com

5 Attorney for Petitioner

6  
7 UNITED STATES DISTRICT COURT  
8 Southern District of California  
9

10 LORENZO CRISTOBAL ANTONIO,  
11 Petitioner,

12 v.

13 CHRISTOPHER J. LaROSE, Senior Warden  
Otay Mesa Detention Center; TODD  
14 BLANCHE, Acting United States Attorney  
General; MARKWAYNE MULLIN, Secretary of  
15 the Department of Homeland Security;  
16 PATRICK DIVVER, ICE San Diego Field  
Office Director, in their official capacities,

17 Respondents.  
18


) Case Number: '26CV2387 LL MMP

) **VERIFIED PETITION FOR WRIT OF  
HABEAS CORPUS**

) Oral Argument Requested

19  
20 Petitioner alleges:

21 **INTRODUCTION**

22 1. Petitioner LORENZO CRISTOBAL ANTONIO  is subjected to  
23 unlawful detention by Respondents at the Otay Mesa Detention Center. Respondents recently  
24 detained Petitioner without any explanation. The immigration judges at Otay Mesa conclude there is  
25 no jurisdiction to even consider setting a bond based on the case *Matter of Yajure Hurtado*, 29 I &  
26 N Dec. 216 (BIA 2025). Moreover, the Ninth Circuit issued a stay in the case of *Maldonado*  
27 *Bautista*. Petitioner seeks an order compelling his immediate release or for the immigration judge to  
28 accept jurisdiction and afford him a bond decision pursuant to 8 U.S.C. § 1226(a).

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**JURISDICTION**

2. This action arises under the Constitution of the United States; the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.*; and the Administrative Procedures Act (“APA”), 5 U.S.C. § 500, *et seq.*

3. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 5 U.S.C. § 701 *et seq.* (APA); and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

4. The court may grant relief under the habeas corpus statutes, the Declaratory Judgment Act, and the All-Writs Act, 28 U.S.C. § 1651.

**VENUE**

5. Venue is proper because Petitioner is detained at the Otay Mesa Detention Facility, in San Diego, California, which is within the jurisdiction of this District.

6. Venue is also proper in this judicial district pursuant to 28 USC §1391(e) because at least one federal respondent is in this District; and a substantial part of the events or omissions giving rise to the claims in this action took place in this District. No real property is involved.

**REQUIREMENTS OF 28 U.S.C. § 2243**

7. The Court must grant the habeas corpus petition 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.*

8. 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**

9. Petitioner LORENZO CRISTOBAL ANTONIO (“Petitioner”) is a citizen of Guatemala. He is detained by the Respondents at the Otay Mesa Detention Center.

1 10. Respondent CHRISTOPHER J. LaROSE is sued in his official capacity as the Senior  
2 Warden of the (Otay Mesa Detention Center). Defendant LaRose has custody of petitioner.

3 11. Respondent TODD BLANCHE is being sued in his official capacity as the Acting  
4 Attorney General of the United States. He is the official generally charged with supervisory  
5 authority over all operations of the Department of Justice. In this capacity, she is responsible for the  
6 administration of the immigration laws pursuant to 8 U.S.C. § 1103 and oversees the Executive  
7 Office for Immigration Review (“EOIR”), a component of the DOJ, which includes the immigration  
8 courts and the Board of Immigration Appeals (“BIA” or “Board”). He is empowered to oversee the  
9 adjudication of removal and bond hearings and by regulation has delegated that power to the  
10 nation’s Immigration Judges and the BIA.

11 12. Respondent MARKWAYNE MULLIN is being sued in his official capacity as the  
12 Secretary of the United States Department of Homeland Security. He is the executive officer who  
13 has been given authority to manage and control U.S. Immigration and Customs Enforcement  
14 (“ICE”). As such, he is the ultimate legal custodian of petitioner.

15 13. Respondent PATRICK DIVVER is being sued in his official capacity as the Field  
16 Office Director for the San Diego Field Office of Immigration and Customs Enforcement (ICE), a  
17 component of DHS with responsibility over persons in immigration custody at the Otay Mesa  
18 Detention Center. Director Divver has custody of petitioner.

### 19 LEGAL FRAMEWORK

20 14. This petition presents the legal question of whether an alien with long term residence  
21 in the United States is subject to detention pursuant to 8 U.S.C. § 1226 or 8 U.S.C. § 1225.

22 15. As a threshold matter, the United States Supreme Court has re-affirmed that aliens are  
23 entitled to due process of law in deportation proceedings and must be given notice and an opportunity to  
24 be heard commensurate with the nature of the case. *Trump v. J. G. G.*, 604 U.S. \_\_\_, 145 S. Ct. 1003,  
25 1006 (2025).

26 16. The “usual removal process” involves an evidentiary hearing before an immigration  
27 judge. *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020). Proceedings are initiated  
28 under 8 U.S.C. § 1229(a), also known as “full removal,” by filing a Notice to Appear with the

1 Immigration Court. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011). Section § 1226  
2 provides that while removal proceedings are pending, a noncitizen “may be arrested and detained” and  
3 that the government “may release the alien on ... conditional parole.” § 1226(a)(2); *accord*  
4 *Thuraissigiam*, 591 U.S. at 108 (during removal proceedings, applicant may either be “detained” or  
5 “allowed to reside in this country”).

6 17. When a person is apprehended under § 1226(a), an ICE officer makes the initial  
7 custody determination. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. §  
8 236.1(c)(8)). A noncitizen will be released if he or she “demonstrate[s] to the satisfaction of the  
9 officer that such release would not pose a danger to property or persons, and that the alien is likely  
10 to appear for any future proceeding.” *Id.* (citing 8 C.F.R. § 236.1(c)(8)). “Federal regulations  
11 provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention.”  
12 *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 CFR §§ 236.1(d)(1)). If, at this hearing,  
13 the detainee demonstrates by the preponderance of the evidence that he or she is not “a threat to  
14 national security, a danger to the community at large, likely to abscond, or otherwise a poor bail  
15 risk,” the IJ will order his or her release. *Diaz*, 53 F.4th at 1197 (citing *Matter of Guerra*, 24 I. & N.  
16 Dec. 37, 40 (B.I.A. 2006)).

17 18. While “§ 1226 applies to *aliens already present in the United States*,” U.S.  
18 immigration law also “authorizes the Government to detain certain *aliens seeking admission into the*  
19 *country* under §§ 1225(b)(1) and (b)(2),” a process that provides for expedited removal. *Jennings*,  
20 583 U.S. at 303 (2018) (emphasis added). Under § 1225, a noncitizen “who has not been admitted  
21 or who arrives in the United States” is considered “an applicant for admission.” 8 U.S.C. §  
22 1225(a)(1). For certain applicants for admission, 8 U.S.C. § 1225 authorizes “expedited removal.” §  
23 1225(b)(1).

24 19. In July 2025, the current administration in Washington decided to try and change the  
25 detention rules that have been applied for decades in immigration court. Ignoring the plain meaning  
26 of the statutes as well as the decades of legal precedent, respondents began to say that the expedited  
27 removal mandatory detention rules apply to *all* noncitizens who entered the United States  
28 unlawfully. Respondents’ central argument is that petitioner is subject to mandatory detention

1 pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the  
2 BIA’s recent decision in *Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025), which affirmed the  
3 government’s new interpretation of § 1225.

4 20. As a threshold matter, the BIA decision *Yajure Hurtado* is entitled to little or no  
5 deference by the District Court. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024)  
6 (observing that while “agencies have no special competence in resolving statutory ambiguities,”  
7 “[c]ourts do”).

8 21. Multiple District Courts across the entire United States have concluded that the  
9 government’s proposed interpretation of the statute (a) disregards the plain meaning of section  
10 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a  
11 recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior  
12 statutory interpretation and practice. The following quote is a representative example:

13 “The Court follows other decisions in this Circuit finding that “seeking admission  
14 requires an affirmative act such as entering the United States or applying for status,  
15 and that it does not apply to individuals who, like [Petitioner], have been residing in  
16 the United States and did not apply for admission or a change of status.” *Mosqueda*  
17 *v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at \*5 (C.D. Cal. Sept. 8,  
18 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL  
19 2676082, at \*11–16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at \*1  
20 (“Every district court to address this question has concluded that the government’s  
21 position belies the statutory text of the INA, canons of statutory interpretation,  
22 legislative history, and longstanding agency practice.”); *Guzman v. Andrews*, No. 25-  
23 CV-1015-KES-SKO (HC), 2025 WL 2617256, at \*4–5 (E.D. Cal. Sept. 9, 2025)  
24 (finding that petitioner who was released on bond and rearrested was entitled to a  
25 bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at \*8 (providing petitioner  
26 with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-  
27 CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same).”

28 *Esquivel-Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24,

1 2025).

2 22. For some reason, the litigation of this issue still continues across the nation.  
3 In late November 2025, another District Court judge included a survey of cases that reached  
4 the same conclusion: “This is not the first time the administration’s change of heart has been  
5 challenged in court. By a recent count, the central issue in this case – the administration’s  
6 new position that *all* noncitizens who came into the United States illegally, but since have  
7 been living in the United States, *must be detained* until their removal proceedings are  
8 completed – has been challenged in at least 362 cases in federal district courts. The  
9 challengers have prevailed, either on a preliminary or final basis, in 350 of those cases  
10 decided by over 160 different judges sitting in about fifty different courts spread across the  
11 United States. Thus, the overwhelming, lopsided majority have held that the law still means  
12 what it always has meant.” *Barco Mercado v. Francis*, No. 25-cv-1234, 25 WL 3295903  
13 (S.D. New York November 26, 2025). (footnotes 22 and 23 omitted but attached to this  
14 petition as Appendix A and Appendix B). The judge clarified that none of these citations  
15 were binding precedent on the court, as each judge must make an independent assessment of  
16 whether the 1225 or 1226 rules apply to the individual petitioner.

17 23. Further, some District Courts have found that immediate release, rather than a bond  
18 hearing, is the appropriate remedy. *See E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D.  
19 Wash. 2025) (“Although the Government notes that Petitioner may request a bond hearing while  
20 detained, such a post-deprivation hearing cannot serve as an adequate procedural safeguard because  
21 it is after the fact and cannot prevent an erroneous deprivation of liberty.”); *Jorge M.F. v. Jennings*,  
22 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) (“if Petitioner is detained, he will already have  
23 suffered the injury he is now seeking to avoid”); *Domingo v. Kaiser*, Case No. 25-cv-05893 (RFL),  
24 2025 WL 1940179, at \*3 (N.D. Cal. July 14, 2025) (“Even if Petitioner[ ] received a prompt post-  
25 detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already  
26 suffered the harm that is the subject of his motion; that is, his potentially erroneous detention.”).

27 24. Once released, the noncitizen’s bond is subject to revocation. Under 8 U.S.C. §  
28 1226(b), “the DHS has authority to revoke a noncitizen’s bond or parole ‘at any time,’ even if that

1 individual has previously been released.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 968 (N.D. Cal.  
2 2019). However, if an immigration judge has determined the noncitizen should be released, the  
3 DHS may not re-arrest that noncitizen absent a change in circumstance. *See Panosyan v. Mayorkas*,  
4 854 F. App’x 787, 788 (9th Cir. 2021).

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6 **FACTUAL ALLEGATIONS**

7 25. Petitioner LORENZO CRISTOBAL ANTONIO is a citizen of Guatemala. He is not  
8 married but has been with his partner for eight years. Petitioner has three U.S citizen children, ages  
9 8, 5, and 1. Petitioner has been regularly employed. He works at a sushi restaurant. He pays his  
10 taxes. He also regularly attends church. In 2013, he was convicted of misdemeanor DUI, and he  
11 paid the fines and completed his community service and required AA meetings. Petitioner has no  
12 other criminal history apart from this and he has remained sober since 2013.

13 26. Petitioner entered the United States in 2007 by crossing unlawfully through the hills.  
14 He was not apprehended upon his arrival to the United States. However, in 2013, removal  
15 proceedings were initiated against him. He was detained but then released under his own  
16 recognizance while his case was pending. This removal proceeding was later terminated in 2023.

17 27. On February 12, 2026, Petitioner was parked in front of his home after having  
18 dropped off his daughters from school when multiple unmarked cars parked in front of and behind  
19 him. Immigration officials then exited the cars and for some reason arrested and detained Petitioner.  
20 The DHS sent Petitioner to the Otay Mesa Detention Center, where he remains today. His detention  
21 at the immigration jail is causing him and his family emotional and physical distress. His partner,  
22 who was pregnant as of February 2026, suffered a miscarriage in March 2026 due to the stress  
23 caused by his detention.

24 28. The DHS started a removal case against petitioner by filing a Notice to Appear  
25 (NTA) at the Otay Mesa Immigration Court. The removal case is pending.

26 29. On April 10, 2026, Petitioner’s motion for custody redetermination at the Otay Mesa  
27 Immigration Court was denied for lack of jurisdiction. The immigration judges at Otay Mesa  
28 conclude there is no jurisdiction to even consider setting a bond based on the case *Matter of Yajure*  
*Hurtado*, 29 I & N Dec. 216 (BIA 2025). Moreover, the Ninth Circuit Court of Appeals has stayed

1 the decision in *Maldonado-Bautista*.

2 **CAUSES OF ACTION**

3 **COUNT 1**

4 (Violation of the Immigration and Nationality Act)

5 30. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 29.

6 31. The DHS detains petitioner pursuant to 8 U.S.C. § 1226, not 8 U.S.C. § 1225;  
7 therefore she is entitled to a bond redetermination hearing before an immigration judge.

8 32. Petitioner's continued detention under Section 1226(a) in the absence of a bond  
9 hearing and decision on the merits violates the INA.

10 **COUNT 2**

11 (Violation of the Due Process Clause)

12 33. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 32.

13 34. In February 2026, DHS agents detained Petitioner in California under mysterious  
14 circumstances. Petitioner was then transferred to the Otay Mesa Detention Center.

15 35. The detention of petitioner without the opportunity to apply for a bond violates Ninth  
16 Circuit case law and the Due Process Clause of the Fifth Amendment to the United States Constitution

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Petitioner respectfully requests this Court to grant the following:

19 (1) Assume jurisdiction over this matter;

20 (2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition  
21 should not be granted within three days;

22 (3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth  
23 Amendment, the INA, and the APA;

24 (4) Issue a Writ of Habeas Corpus ordering Respondents to either (a) release Petitioner  
25 immediately or (b) schedule a bond hearing pursuant to 8 U.S.C. § 1226(a);

26 (5) Issue an order prohibiting respondents from re-detaining petitioner without a material  
27 change in circumstances and a pre-deprivation hearing where respondents must prove by clear and  
28 convincing evidence that petitioner is either a flight risk or danger to the community;

1 (6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (28  
2 U.S.C. § 2412), and any other applicable statute or regulation; and

3 (7) Grant any further relief this Court deems just and proper.

4 DATED: 15 April 2026

Respectfully submitted,

5 /s/ *William Baker*

6 William Baker (157 906)  
7 MORENO & ASSOCIATES  
8 2082 Otay Lakes Road, Suites 102  
9 Chula Vista, California 91913  
10 Telephone: (619) 422-4885  
11 william.baker@morenoandassociates  
12 Attorney for petitioner  
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**VERIFICATION**

**DECLARATION UNDER PENALTY OF PERJURY**

I declare under penalty of perjury under the laws of the United States that I am the petitioner; I have read the petition or had it read to me in a language I understand, and the information in the petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

**VERIFICACIÓN**

**DECLARACIÓN BAJO PENA DE PERJURIO**

Declaro bajo pena de perjurio según las leyes de los Estados Unidos que soy el peticionario; He leído la petición o me la han leído en un idioma que entiendo, y la información de la petición es verdadera y correcta. Entiendo que una declaración falsa de un hecho material puede servir como base para el enjuiciamiento por perjurio.



\_\_\_\_\_  
Lorenzo Cristobal Antonio  
Petitioner/Peticionario