

1 Leah L. Chavarria, Esq.
CA Bar # 297506
2 2251 San Diego Ave., STE B-200
San Diego, CA 92110
3 leah@hurwitzholt.com
Attorney for Petitioner

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

7 Oscar LINARES GARCIA
Petitioner,

Case No. '26CV2605 TWR MMP

8 v.

Agency No. 

9 Todd Blanche, Acting Attorney
General of the United States,
10 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**

11 Markwayne Mullin, Secretary of
Homeland Security;

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

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


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

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

21

1 Respondents.

2 **INTRODUCTION**

- 3 1. Petitioner, Oscar Linares Garcia () (hereinafter “Petitioner” or “Mr.
4 Linares Garcia”), a 36-year-old Mexican national, has been detained at the Otay
5 Mesa Detention Center, in violation of his due process rights, since his placement
6 in removal proceedings on March 2, 2026. Ex. A, Declaration of Attorney
7 Cabrera, ¶ 8.
- 8 2. Mr. Linares Garcia’s last entry to the United States was on or about December 20,
9 2008 at or near Tecate, California, without inspection, admission, or apprehension
10 by U.S. immigration authorities. *Id.* ¶ 4; *see also* Ex. B, Notice to Appear
11 (“NTA”). He has remained living in the United States since without departure.
12 Ex. A, ¶ 4. He has no criminal record or any aggravating circumstance that should
13 prevent his eligibility for an immigration judge to conduct a bond hearing,
14 according to the Immigration and Nationality Act (“INA”). *Id.* ¶ 6.
- 15 3. Petitioner asks this Court to find that his continued detention is unlawful without
16 an opportunity for a bond hearing given Petitioner is entitled to consideration for
17 release on bond under 8 U.S.C. § 1226(a); that he may not be transferred during
18 the pendency of this petition; and that this court make an order to show cause.
19 Petitioner requests Respondents be required to provide a response within three
20 days or alternatively timing pursuant to Chief Judge Order No. 144.

21 **JURISDICTION**

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

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

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

9 7. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of
10 jurisdiction. Petitioner is not contesting the commencement or adjudication of
11 removal proceedings against him, nor is he raising an issue with respect to the
12 execution of removal. Petitioner does challenge his classification under Section
13 1225(b)(2) instead of Section 1226(a) and the Executive Office for Immigration
14 Review's ("EOIR") decision that immigration judges lack authority to provide a
15 bond hearing on that basis. The petition is independent of the removal proceedings
16 and all questions related to the commencement of removal proceedings or any part
17 of the removal process. "[C]laims that are independent of or collateral to the
18 removal process do not fall within the scope of § 1252(b)(9)." *J.E.F.M. v. Lynch*,
19 837 F.3d 1026, 1032 (9th Cir. 2016). Additionally, Section 1252(g) "does not
20 prohibit challenges to unlawful practices merely because they are in some fashion
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1 connected to removal orders.” *Ibarra-Perez v. United States*, 154 F.4th 989, 997
2 (9th Cir. 2025). Thus, this Court is not stripped of jurisdiction by Sections 1252(g)
3 and 1252(b)(9).

4 **VENUE**

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

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).

21 **PARTIES**

1 ***Petitioner***

2 11. Petitioner, Mr. Linares Garcia, is a Mexican national who is in custody at the
3 Otay Mesa Detention Center located at 7488 Calzada De La Fuente, San Diego,
4 CA 92154. When at liberty, he, his wife, and his children reside in Escondido,
5 California. He is in the custody, and under the direct control, of Respondents and
6 their agents.

7 ***Respondents***

8 12. Respondent Todd Blanche, Acting U.S. Attorney General, is sued in his official
9 capacity as the Attorney General of the United States and the senior official of the
10 U.S. Department of Justice (“DOJ”). In that capacity, he has the authority to
11 adjudicate removal cases and to oversee the Executive Office for Immigration
12 Review (“EOIR”), which administers the immigration courts and the Board of
13 Immigration Appeals. Respondent Blanche is a legal custodian of Petitioner.

14 13. Respondent Markwayne Mullin Secretary of U.S. Department of Homeland
15 Security (“DHS”) is sued in their official capacity as the Secretary of the DHS. In
16 this capacity, Respondent Secretary is responsible for the implementation and
17 enforcement of the Immigration and Nationality Act, and oversees U.S.
18 Immigration and Customs Enforcement, the component agency responsible for
19 Petitioner’s detention and custody. Respondent Secretary is a legal custodian of
20 Petitioner.

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1 14. Respondent Todd Lyons is sued in his official capacity as the Senior Official
2 Performing the Duties of the Director ICE. Respondent Lyons is the legal
3 custodian of Petitioner.

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

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

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

13 **STATEMENT OF FACTS**

14 18. Petitioner, Mr. Linares Garcia, a 36-year-old Mexican national, has lived in the
15 United States continuously since his last entry without inspection or admission in
16 approximately 2008. Ex. A, ¶ 4. He has firm roots in the United States. *Id.* ¶ 5.

17 19. Mr. Linares Garcia is a loving husband and father to his U.S. wife and citizen
18 child ages 17, 14, 11 and 3. Ex. A, ¶ 5.

19 20. On March 28, 2026, while Mr. Linares Garcia was driving in his car when ICE
20 officers stopped him, questioned him, and then transported him to their processing
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1 facility. Ex. A, ¶ 8. He was detained and eventually transferred him to the Otay
2 Mesa Detention Center, where he remains today. *Id.*

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

8 22. On November 20, 2025, a district court granted partial summary judgment on
9 behalf of individuals similar to Petitioner who entered the United States without
10 inspection and admission and are eligible for a bond hearing under longstanding
11 reading of 8 U.S.C. § 1226(a) and on November 25, 2025, certified a nationwide
12 class and extended declaratory judgment to the certified class. *Maldonado*
13 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025
14 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary
15 judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No.
16 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D.
17 Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide
18 Bond Eligible Class, incorporating and extending declaratory judgment from
19 Order Granting Petitioners' Motion for Partial Summary Judgment) (hereinafter
20 generally "*Maldonado Bautista*"). The declaratory judgment held that the Bond
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1 Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not
2 be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado*
3 *Bautista*, 2025 WL 3289861, at *11.

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

7 24. Petitioner, Mr. Linares Garcia, is a member of the Bond Eligible Class, as he:

8 a. does not have lawful status in the United States and is currently detained at
9 the Otay Mesa Detention Center. He was apprehended by immigration
10 authorities on or about March 28, 2026;

11 b. entered the United States without inspection over 17 years ago and was not
12 apprehended upon arrival, *cf. id.*; and

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

14 25. Contrary to law, the Executive Office for Immigration Review (“EOIR”), and its
15 sub-agency the immigration court, and supported by the Department of Homeland
16 Security’s legal counsel, blatantly refused to find jurisdiction over bond
17 proceedings for persons similarly situated as Petitioner, citing to *Matter of Yajure*
18 *Hurtado*, 29 I&N Dec. 216 (BIA 2025), and completely disregarding the final
19 judgment in *Lazaro Maldonado Bautista et al. v. Santacruz*, No. 5:25-cv-01873-
20 SSS-BFM (C.D. Cal. Dec. 18, 2025). Ex. A, ¶ 10.

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

5 27. On March 6, 2026, the U.S. Court of Appeals for the Ninth Circuit ("Ninth
6 Circuit") granted a stay on the final decision in *Maldonado Bautista*, temporarily
7 halting the enforcement of *Maldonado Bautista* outside of the Central District of
8 California until further briefing and oral arguments on the motion are finalized.
9 *Maldonado Bautista, et al. v. United States Department of Homeland Security, et*
10 *al.*, No. 26-1044, ECF No. 5 (9th Cir. March 6, 2026).

11 28. Mr. Linares Garcia is a Bond Eligible Class member to the class outlined in
12 *Maldonado Bautista*. Moreover, as fully discussed therein, he is detained under 8
13 U.S.C. § 1226(a) and eligible for bond. Courts in this district have repeatedly
14 reached the same conclusion. *See, e.g., Arias Torres v. Bondi*, No. 25-cv-2457-
15 BAS-MSB, 2025 WL 3214773 (S.D. Cal. Nov. 18, 2025); *Martinez Lopez v.*
16 *LaRose*, No. 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct. 30, 2025);
17 *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025 WL 3078837 (S.D. Cal. Nov. 4,
18 2025); *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); *Esquivel-Ipina v.*
19 *LaRose*, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361 (S.D. Cal. Oct. 24,
20 2025); *Lucas-Miguel v. LaRose*, No. 25-cv-3022-RSH-JLB, 2025 WL 3251580

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1 (S.D. Cal. Nov. 21, 2025); *Vasquez-Diaz v. LaRose*, No. 25-cv-3038-TWR-JLB,
2 ECF No. 6 (S.D. Cal. Nov. 13, 2025); *Cardoso v. LaRose*, No. 25-cv-3043-BJC-
3 VET, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Maceda-Garcia v. Noem*, No. 25-cv-
4 2968-JO-JLB, ECF No. 9 (S.D. Cal. Nov. 13, 2025); *A.S. v. LaRose*, No. 25-cv-
5 2876-RBM-VET, ECF No. 9 (S.D. Cal. Nov. 19, 2025); *Prieto-Cordova v. LaRose*,
6 No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025);
7 *Lagarda-Vega v. Noem*, No. 25-cv-2970-GPC-DDL, 2025 WL 3558931 (S.D. Cal.
8 Dec. 11, 2025); *Nayyer v. LaRose*, No. 25-cv-3111-AGS-DDL, ECF No. 7 (S.D.
9 Cal. Dec. 12, 2025); *Amaya v. Noem*, No. 25cv2892-BTM-DEB, 2025 WL
10 3182998 (S.D. Cal. Nov. 13, 2025).

11 29. Petitioner is detained pursuant to 8 U.S.C. 1226(a), which governs the detention
12 of noncitizens “inside the United States” and “present in the country.” *Jennings v.*
13 *Rodriguez*, 583 U.S. 281, 288–89 (2018). Petitioner was unquestionably detained
14 in the interior of the country following the issuance of the NTA. Ex. B.

15 30. Therefore, Mr. Linares Garcia requests this court issue a habeas order requiring a
16 lawful bond hearing before a fair, neutral, and open-minded arbiter be held for
17 Mr. Linares Garcia so that his unlawful detention does not continue.

18 **CLAIM FOR RELIEF**
19 **Violation of the INA**

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

1 32. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for
2 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 Linares Garcia's eligibility for bond under 8 U.S.C. § 1226(a) remains.

5 33. 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 34. 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 a. Assume jurisdiction over this matter;
- 20 b. Issue an order preventing Respondents from transferring Petitioner away from
21 the Otay Mesa Detention Center;

1 c. Issue an order to show cause and require a response within three days from
2 Respondents as to why this petition should not be granted, pursuant to 28 U.S.C. §
3 2243;

4 d. Issue a writ of habeas corpus requiring Respondents to release Petitioner unless
5 they provide a bond hearing under 8 U.S.C. § 1226(a) and that the bond hearing must
6 be before a fair, neutral, open-minded arbiter, and if the bond hearing is not fair and
7 neutral, Petitioner be released immediately;

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

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

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13 Dated: April 24, 2026

Respectfully submitted,

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

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LIST OF EXHIBITS

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EXHIBIT A: Declaration of Tessa Cabrera

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EXHIBIT B: Notice to Appear

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

I represent Petitioner, Oscar Linares Garcia, 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 24th day of April, 2026.

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