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7 UNITED STATES DISTRICT COURT  
8 Southern District of California

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10 FRANCISCO NICOLAS PASCUAL,  
11 Petitioner,  
12 v.

) Case Number: '26CV2871 RSH DEB

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

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.

) Oral Argument Requested

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19  
20 Petitioner alleges:

21 **INTRODUCTION**

22 1. Petitioner FRANCISCO NICOLAS PASCUAL (~~XXXXXXXXXX~~) 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 the immigration judge to accept jurisdiction and  
28 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 FRANCISCO NICOLAS PASCUAL (“Petitioner”) is a citizen of Guatemala. He is detained by the Respondents at the Otay Mesa Detention Center.



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).

5 **FACTUAL ALLEGATIONS**

6 25. Petitioner FRANCISCO NICOLAS PASCUAL is a citizen of Guatemala. He is not  
7 married but has been with his partner for five years. Petitioner has a four-year-old son in  
8 Guatemala. Petitioner has been regularly employed. He works in landscaping. He earns around  
9 \$3,500 a month. He supports his family in Guatemala.

10 26. Petitioner entered the United States in 2022 by crossing unlawfully through the hills.  
11 He was not apprehended upon his arrival to the United States. He has no criminal history.

12 27. On April 30, 2026, Petitioner was a passenger in a car with his coworkers on the way  
13 to work. When they arrived to his workplace and were parking, four unmarked vehicles arrived and  
14 surrounded them. Then four Immigration officials exited the cars and for some reason proceeded to  
15 arrest and detain everyone in the car including Petitioner. The DHS sent Petitioner to the Otay Mesa  
16 Detention Center, where he remains today. His detention at the immigration jail is causing him and  
17 his family emotional distress.

18 28. The DHS started a removal case against Petitioner by filing a Notice to Appear  
19 (NTA) at the Otay Mesa Immigration Court. The removal case is pending. Petitioner qualifies to  
20 apply for asylum, withholding, and CAT.

21 29. Petitioner has not filed a motion for custody redetermination at the Otay Mesa  
22 Immigration Court because this is futile. The immigration judges at Otay Mesa conclude there is no  
23 jurisdiction to even consider setting a bond based on the case *Matter of Yajure Hurtado*, 29 I & N  
24 Dec. 216 (BIA 2025). Moreover, the Ninth Circuit Court of Appeals has stayed the decision in  
25 *Maldonado-Bautista*., the Ninth Circuit Court of Appeals has stayed the decision in *Maldonado-*  
26 *Bautista*.

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**CAUSES OF ACTION**

**COUNT 1**

(Violation of the Immigration and Nationality Act)

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

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

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

**COUNT 2**

(Violation of the Due Process Clause)

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

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

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

**PRAYER FOR RELIEF**

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

(1) Assume jurisdiction over this matter;

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

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

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

(5) Issue an order prohibiting respondents from re-detaining petitioner without a material change in circumstances and a pre-deprivation hearing where respondents must prove by clear and 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: 06 May 2026

Respectfully submitted,

5 */s/ William Baker*

6 William Baker (157 906)  
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**VERIFICATION**

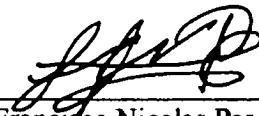
**DECLARATION UNDER PENALTY OF PERJURY**

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.

  
\_\_\_\_\_  
Francisco Nicolas Pascual  
Petitioner/Peticionario