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

7 Jose Israel FRANCO GUZMAN
Petitioner,

8 v.

9 Todd Blanche, Acting Attorney
General of the United States,
Department of Justice;

10 Markwayne Mullin, Secretary of
11 Homeland Security;

12 David J. Venturella, 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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Case No. '26CV3837 GPC MSB

Agency No. 

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

INTRODUCTION

1. Petitioner, Jose Israel Franco Guzman ( (hereinafter “Petitioner” or “Mr. Franco Guzman”), a 51-year-old Mexican national, has been detained in immigration custody at the Otay Mesa Detention Center, in violation of his due process rights, since approximately June 3, 2026. Ex. A, Notice to Appear (“NTA”).

2. According to Mr. Franco Guzman, his last and only entry to the United States was with his immediate family on or about April 2004, near Tecate, California, without inspection, admission, or parole. *Id.* He has remained living in the United States since without departure. He alleges he has no criminal record and Counsel has not obtained any records that would discredit this claim. Therefore there is no aggravating circumstance that should prevent his eligibility for an immigration judge to conduct a bond hearing according to the Immigration and Nationality Act (“INA”).

3. Therefore, Petitioner files this petition. Petitioner asks this Court to find that his continued detention is unlawful without an opportunity for a bond hearing given Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a); that he may not be transferred during the pendency of this petition; and that this court make an order to show cause. Petitioner requests Respondents be required to provide a response within three days or alternatively timing pursuant to

1 Chief Judge Order No. 144.

2 **JURISDICTION**

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

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

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

11 7. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of
12 jurisdiction. Petitioner is not contesting the commencement or adjudication of
13 removal proceedings against him, nor is he raising an issue with respect to the
14 execution of removal. Petitioner does challenge his classification under Section
15 1225(b)(2) instead of Section 1226(a) and the Board of Immigration Appeals'
16 ("BIA") decision that immigration judges lack authority to provide a bond hearing
17 on that basis. The petition is independent of the removal proceedings and all
18 questions related to the commencement of removal proceedings or any part of the
19 removal process. "[C]laims that are independent of or collateral to the removal
20 process do not fall within the scope of § 1252(b)(9)." *J.E.F.M. v. Lynch*, 837 F.3d
21

1 1026, 1032 (9th Cir. 2016). Additionally, Section 1252(g) “does not prohibit
2 challenges to unlawful practices merely because they are in some fashion
3 connected to removal orders.” *Ibarra-Perez v. United States*, 154 F.4th 989, 997
4 (9th Cir. 2025). Thus, this Court is not stripped of jurisdiction by Sections 1252(g)
5 and 1252(b)(9).

6 VENUE

7 8. Venue is proper because Petitioner is detained and currently resides at the Otay
8 Mesa Detention Center in the County of San Diego, which is within the
9 jurisdiction of this District and no real property is involved in this action. 28
10 U.S.C. § 1391(e).

11 REQUIREMENTS OF 28 U.S.C. § 2243

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

17 10. Courts have long recognized the significance of the habeas statute in protecting
18 individuals from unlawful detention. The Great Writ has been referred to as
19 “perhaps the most important writ known to the constitutional law of England,
20 affording as it does a *swift* and imperative remedy in all cases of illegal restraint or
21 confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

PARTIES

Petitioner

11. Petitioner, Mr. Franco Guzman, 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. He is in the custody, and under the direct control, of Respondents and their agents.

Respondents

12. Respondent, Todd Blanche, Acting U.S. Attorney General, 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. Immigration and Customs Enforcement, the component agency responsible for

1 Petitioner's detention and custody. Respondent Secretary is a legal custodian of
2 Petitioner.

3 14. Respondent, David J. Venturellas, is sued in his official capacity as the Senior
4 Official Performing the Duties of the Director ICE. Respondent Venturellas is the
5 legal custodian of Petitioner.

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

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

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

15 **STATEMENT OF FACTS**

16 18. Petitioner, Mr. Franco Guzman, a 51-year-old Mexican national, who has built a
17 life in the United States continuously for over 22 years. Ex. A. When at liberty,
18 he lives with his longtime partner and their 22-year-old DACA recipient child in
19 Escondido, California.

1 19. According to Mr. Franco Guzman, he works in the meat industry, pays his taxes,
2 and has no criminal record.

3 20. Just like any other Wednesday morning, on June 3, 2026, Mr. Franco Guzman
4 was driving to work in Escondido, California, but this time his car was stopped
5 and surrounded by other cars: in front, beside, and behind him. Officers asked
6 him if he had any identification documents. He cooperated and provided a valid
7 California driver license. Officers then asked for identification that showed where
8 he was from, and he provided a Mexican *matricular* Identification Card. The
9 officers told him he was not allowed in this country, arrested him, and later
10 transferred him to the Otay Mesa Detention Center where he remains today. The
11 details of why the car Mr. Franco Guzman drove was surrounded by immigration
12 officers are unclear and were not provided to Mr. Franco Guzman.

13 21. After Mr. Franco Guzman was transferred to the custody of ICE, the DHS placed
14 him in removal proceedings pursuant to 8 U.S.C. § 1229a by serving him a NTA
15 dated June 3, 2026. DHS has charged Petitioner as being inadmissible under 8
16 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without
17 inspection and is present without admission. Ex. A.

18 22. Mr. Franco Guzman remains in custody at the Otay Mesa Detention Center in
19 violation of his rights.

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LEGAL FRAMEWORK

23. The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” U.S. Const. amend. IV. “The touchstone of the Fourth Amendment is reasonableness” *United States v. Knights*, 534 U.S. 112, 118, 122 S.Ct. 587, 151 L.Ed.2d 497 (2001). This is “generally assessed by carefully weighing ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.’ ” *County of Los Angeles v. Mendez*, 581 U.S. 420, 427, 137 S.Ct. 1539, 198 L.Ed.2d 52 (2017) (quoting *Tennessee v. Garner*, 471 U.S. 1, 8, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985)). Overall, reasonableness is an objective inquiry that “is evaluated by looking at the ‘totality of the circumstances.’ ” *Case v. Montana*, 607 U.S. —, 146 S. Ct. 500, 508, — L.Ed.2d — (2026) (first quoting *Barnes v. Felix*, 605 U.S. 73, 80, 145 S.Ct. 1353, 221 L.Ed.2d 751 (2025); and then quoting *Ohio v. Robinette*, 519 U.S. 33, 39, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996)).

24. Not only is Petitioner detained in violation of his Fourth Amendment right, but Petitioner is detained pursuant to 8 U.S.C. 1226(a), which governs the detention of noncitizens “inside the United States” and “present in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018).

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

No. 25-cv-2876-RBM-VET, ECF No. 9 (S.D. Cal. Nov. 19, 2025); *Prieto-Cordova v. LaRose*, No. 25-cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Lagarda-Vega v. Noem*, No. 25-cv-2970-GPC-DDL, 2025 WL 3558931 (S.D. Cal. Dec. 11, 2025); *Nayyer v. LaRose*, No. 25-cv-3111-AGS-DDL, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Amaya v. Noem*, No. 25cv2892-BTM-DEB, 2025 WL 3182998 (S.D. Cal. Nov. 13, 2025).

26. Petitioner was unquestionably detained in the interior of the country prior to the issuance of the NTA. Ex. A.

27. Therefore, Mr. Franco Guzman requests this court issue a habeas order requiring a lawful bond hearing before a fair, neutral, and open-minded arbiter be held for him so that his unlawful detention does not continue.

CLAIMS FOR RELIEF

COUNT ONE

Violation of Fourth Amendment and 8 C.F.R. § 287.8(b)(2): Unlawful Detention Without Reasonable Suspicion

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

29. Respondents detained Petitioner without reasonable suspicion.

30. Respondents impermissibly relied on Petitioner's race as a basis for stopping the car and then detaining him. It is unreasonable for DHS to have arrested and detained him at an unlawful stop.

1 31. Respondents' detention of Petitioner violated the Fourth Amendment and the
2 regulations at 8 C.F.R. § 287.8(b)(2).

3 **COUNT TWO**
4 **Violation of Fourth Amendment and 8 C.F.R. § 287.8(c)(2): Unlawful**
5 **Arrest Without Probable Cause**

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

8 33. Respondents arrested Petitioner without probable cause.

9 34. Respondents impermissibly relied on Petitioner's race as a basis for stopping the
10 car and then detaining him after requiring him to provide a second identification
11 card. DHS had the opportunity to issue a warrant for her arrest. It is unreasonable
12 for DHS to have arrested and detained him at an unlawful stop.

13 35. Respondents' arrest of Petitioner violated the Fourth Amendment and the
14 regulations at 8 C.F.R. § 287.8(c)(2).

15 **COUNT THREE**
16 **Violation of 8 U.S.C. § 1357(a)(2): Warrantless Arrests Without**
17 **Probable Cause of Flight Risk**

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

20 37. Respondents arrested Petitioner without probable cause and without a warrant.
21 DHS had the opportunity to issue a warrant for his arrest. It is unreasonable for
DHS to have arrested and detained him at an unlawful stop.

1 38. Before the arrest, Respondents failed to make an individualized finding of flight
2 risk. The failure to meet these requirements is a violation of 8 U.S.C. § 1357(a)(2).

3 **COUNT FOUR**
4 **Violation of 8 C.F.R. § 287.8(c)(2)(ii): Warrantless Arrests Without**
5 **Reason to Believe of Flight Risk**

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

8 40. Respondents arrested Petitioner without a warrant and without “reason to believe”
9 that he was “likely to escape before a warrant can be obtained” in violation of 8
10 C.F.R. § 287.8(c)(2)(ii). There are no reasonable facts in this case that would
11 justify arrest and detention here given the way Petitioner was stopped and
12 questioned without sufficient grounds for doing so.

13 41. Arrest in violation of the regulation is unlawful. *See Sanchez v. Sessions*, 904 F.3d
14 643, 650 (9th Cir. 2018); *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019).

15 **CLAIM FIVE**
16 **Violation of the INA - 8 U.S.C. 1226(a)**

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

19 43. Mr. Franco Guzman’s eligibility for bond under 8 U.S.C. § 1226(a) remains. A
20 multitude of cases have concluded that 8 U.S.C. § 1226(a) is the appropriate
21 standard for bond in Petitioner’s circumstance and that applying Section 1225 “(1)
disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the

1 relationship between sections 1225 and 1226; (3) would render a recent
2 amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of
3 prior statutory interpretation and practice.” *Lepe v. Andrews*, 801 F. Supp. 3d 1104,
4 1112 (E.D. Cal. 2025) (citing cases).

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

8 **PRAYER FOR RELIEF**

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

- 10 1) Assume jurisdiction over this matter;
- 11 2) Issue an order preventing Respondents from transferring Petitioner away from the
12 Otay Mesa Detention Center;
- 13 3) Issue an order to show cause and require a response within three days from
14 Respondents as to why this petition should not be granted, pursuant to 28 U.S.C. §
15 2243;
- 16 4) Issue a writ of habeas corpus requiring Respondents to release Petitioner
17 immediately to vindicate his Fourth Amendment right and stop Respondents from
18 re-arresting Petitioner without a proper warrant.
- 19 5) Alternatively, require Respondents to release Petitioner unless they provide a bond
20 hearing under 8 U.S.C. § 1226(a) and that the bond hearing must be before a fair,
21

1 neutral, open-minded arbiter, and if the bond hearing is not fair and neutral,
2 Petitioner be released immediately;

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

6 7) Grant any other and further relief that this Court deems just and proper.
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8

9 Dated: July 1, 2026

Respectfully submitted,

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

13 **LIST OF EXHIBITS**

14 EXHIBIT A: Notice to Appear
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Jose Israel Franco Guzman, 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 1st day of July, 2026.

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