

ERIC GRANT
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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARLOS DANIEL GOMEZ GOMEZ,

Plaintiff,

v.

WARDEN, GOLDEN STATE ANNEX
DETENTION FACILITY,

Respondent.

CASE NO. 1:26-CV-05324-DAD-JDP

OPPOSITION TO PETITION FOR WRIT
OF HABEAS CORPUS AND ALL
INJUNCTIVE RELIEF

Petitioner is detained pursuant to 8 U.S.C. § 1226(a). The only relief he should be granted is a custody redetermination hearing pursuant to 8 U.S.C. § 1226(a) and its implementing regulations where he bears the burden of establishing that he does not constitute a flight risk or a danger. The Ninth Circuit has held that section 1226(a) provides facially constitutional procedures.

BACKGROUND

Petitioner is a native and citizen of El Salvador. Exhibit A (Form I-213).¹ On October 10, 2015, Petitioner entered the United States without inspection and placed in removal proceedings. *Id.* On May 30, 2018, Petitioner was ordered removed by the Immigration Judge. *Id.* On February 28, 2020, the Board of Immigration Appeals (BIA) dismissed Petitioner's appeal of the removal order. *Id.* On August 26, 2020, Petitioner moved to reopen removal proceedings. *Id.* On November 23, 2021, the BIA

¹ Undersigned counsel has provided the relevant documents that are available within the timeframe to respond to the petition.

1 reopened Petitioner's removal proceedings. *Id.* On February 28, 2023, Petitioner was granted asylum.
 2 *Id.* On February 6, 2025, Petitioner was granted Lawful Permanent Residency. *Id.* On May 14, 2026,
 3 Petitioner was convicted of violation of California Penal Code § 261.5(d) Unlawful Sexual
 4 Intercourse/Adult Over 21 Years and sentenced to 364 days in county jail. *Id.* As a result of his
 5 conviction, Petitioner was required to register as a sex offender. Exhibit B (criminal conviction
 6 documents). Petitioner was re-detained by ICE on or about June 3, 2026, following his conviction.
 7 Petitioner is in removal proceedings and detained under 8 U.S.C. § 1226(a).

8 LEGAL STANDARD

9 I. Detention Under 8 U.S.C. §1226

10 Section 1226, of Title 8 of the United States Code governs the detention of aliens who have been
 11 lawfully admitted into the U.S. but are deportable and subject to removal proceedings. Section 1226(a)
 12 provides for the arrest and detention of these aliens "pending a decision on whether the alien is to be
 13 removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), DHS may, in its discretion,
 14 detain an alien during his removal proceedings, release him on bond, or release him on conditional
 15 parole.² An alien can request a custody redetermination (*i.e.*, a bond hearing) by an IJ at any time before
 16 a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1003.19.
 17 Application for a bond redetermination hearing may be made by a respondent (here, the Petitioner)
 18 orally, in writing, or, at the discretion of the immigration judge, by telephone. 8 C.F.R. § 1003.19(b). At
 19 a custody redetermination, the IJ may continue detention or release the alien on bond or conditional
 20 parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). IJs have broad discretion in deciding whether to
 21 release an alien on bond. *See In re Guerra*, 24 I&N Dec. 37, 39–40 (BIA 2006) (listing nine factors for
 22 IJs to consider); *Matter of Siniauskas*, 27 I&N Dec. 207, 207–208 (discussing Respondent's burden)
 23 (BIA 2018) ("An alien in a custody determination under section 236(a) of the Immigration and
 24 Nationality Act, 8 U.S.C. § 1226(a) (2012), must establish to the satisfaction of the Immigration Judge
 25 and the Board that he or she does not present a danger to persons or property, is not a threat to the

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 27 ² Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled
 28 into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d
 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a
 parole, the alien was not eligible for adjustment of status under § 1255(a)).

national security, and does not pose a risk of flight.”). A custody redetermination decision may be appealed to the Board of Immigration Appeals.

ARGUMENT

Here, Respondent does not dispute that Petitioner is entitled to receive a custody redetermination hearing under section 1226(a) and it is implementing regulations. Under section 1226(a), the detainee must request the bond hearing. A bond hearing in lieu of release is particularly appropriate when, as here, where Petitioner was serving a sentence for his recent sex crime involving a minor and is required to register as a sex offender. *See Mansoor v. Figueroa*, No. 3:17-cv-01695-GPC (NLS), 2018 WL 840253, at *4 (S.D. Cal. Feb. 13, 2018) (Immigration Judges are well suited to assess eligibility for release, while a district court “lacks the factual support to make a determination about Petitioner’s risk of flight or dangerousness to the community”); *Arshakyam v. Warden of Cal. City Det.*, No. 1:25-cv-01780-DAD-AC (HC), 2026 WL 143143 at *5 (E.D. Cal. Jan. 20, 2026) (granting a bond hearing not immediate release).

The Ninth Circuit has found section 1226(a)’s procedures to be constitutionally sufficient while acknowledging that not all as-applied challenges are foreclosed. *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1213 (9th Cir. 2022) (finding § 1226(a)’s procedures satisfied due process both facially and as applied to Rodriguez Diaz); *id.* at 1197–98 (describing procedures and discussing their adequacy). There is nothing unique however about this case that would make section 1226(a)’s procedures constitutionally deficient as applied to Petitioner.

Moreover, both the Ninth Circuit in *Rodriguez Diaz* and the Supreme Court in *Jennings* found section 1226(a) does not require the government to bear the burden. *See Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (noting in section 1226(a) “‘even remotely supports the imposition’ of ‘periodic bond hearings every six months in which the Attorney General must prove by clear and convincing evidence that the alien’s continued detention is necessary.’”). In addition, the Ninth Circuit questioned how the burden-shifting and standard of proof that Petitioner demands could be constitutionally required:

Nothing in this record suggests that placing the burden of proof on the government was constitutionally necessary to minimize the risk of error, much less that such burden-shifting would be constitutionally necessary in

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1 all, most, or many cases. There is no reason to believe that, as a general
2 proposition, the government will invariably have more evidence than the
3 alien on most issues bearing on alleged lack of future dangerousness or
flight risk.

4 *Rodriguez Diaz*, 53 F.4th at 1212. Accordingly, if the Court grants Petitioner a bond hearing, he should
5 bear the burden of proof at the hearing.

6 Finally, Petitioner should be required to exhaust his administrative remedy before filing a habeas
7 petition. When, as here, the Petitioner is prudentially required to exhaust administrative remedies but
8 has failed to do so, the district court may dismiss the petition without prejudice or stay the proceedings
9 until the petitioner has exhausted administrative remedies. *Hernandez v. Sessions*, 872 F.3d 976, 988
10 (9th Cir. 2017). The Court should dismiss this petition or, alternatively, stay these proceedings.

11 Requiring Petitioner to exhaust his administrative remedy under section 1226(a) through the
12 immigration court would allow the agency to address the detention issue in the first instance and may
13 “preclude the need for judicial review.” *Okoth v. Kaiser*, No. 1:25-cv-01936-KES-SAB, 2026 WL
14 45199, at *4 (E.D. Cal. Jan. 7, 2026).

15 **II. Response to Court’s July 13, 2026, Order**

16 Respondent does not oppose the Court converting the motion for temporary restraining order into
17 one for a preliminary injunction. Respondent does not oppose, and in fact, respectfully requests that the
18 Court resolve the underlying habeas petition on the current briefing and without a hearing.

19 Respondent identifies several distinguishing factors between the instant case and those cited in
20 the Court’s order. Dkt. 6. First, Petitioner completely omits his 2026 conviction and that he was
21 detained while serving his criminal sentencing in county jail. The other petitioners were without
22 criminal histories or serious criminal conduct as Petitioner is here. Second, the other petitioners were
23 engaged some form of immigration compliance program and their detention occurred following a check-
24 in. Here however, Petitioner was convicted of a sex crime and his detention occurred as the result of his
25 conviction, not because he was engaged in any form of compliance. Finally, the other petitioners did not
26 present as dangers to the community, whereas Petitioner does.

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CONCLUSION

For the foregoing reasons, the petition for a writ of habeas corpus and all injunctive relief should be denied.

Dated: July 14, 2026

ERIC GRANT
United States Attorney

By: /s/ ELISA M. RODRIGUEZ
ELISA M. RODRIGUEZ
Assistant United States Attorney

CERTIFICATE OF SERVICE BY MAIL

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Eastern District of California and is a person of such age and discretion to be competent to serve papers; that on July 14, 2026, she served a copy of the OPPOSITION TO PETITION FOR WRIT OF HABEAS CORPUS AND ALL INJUNCTIVE RELIEF by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and its contents in the United States Mail at Fresno, California.

Addressees: **Carlos Daniel Gomez Gomez**

GOLDEN STATE ANNEX
611 Frontage Road
McFarland, CA 93250

/s/ Elisa M. Rodriguez
Elisa M. Rodriguez

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