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7 **UNITED STATES DISTRICT COURT FOR THE**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 Gerardo Roman Salgado,

Case No.: '26CV4325 BJC JLB

10 Petitioner,

**PETITION FOR WRIT OF
HABEAS CORPUS
PURSUANT TO 28 U.S.C. §
2241**

11 v.

12 Markwayne Mullin, *Secretary of*
Homeland Security; David Venturella,
Acting Director, U.S. Immigration and
13 *Customs Enforcement*;
Gregory J. Archambeault, *Field Office*
14 *Director, San Diego Field Office,*
Immigration and Customs Enforcement;
15 Todd Blanche, *Attorney General*;
Warden, *Otay Mesa Detention Center*
16

17 Respondents.

18 **PETITION FOR WRIT OF HABEAS CORPUS**

19 **INTRODUCTION**

20 1. Petitioner Gerardo Roman Salgado (“Mr. Roman Salgado” or
21 “Petitioner”) (A# ) is a native and citizen of Mexico who last entered the
22 United States without inspection at or between ports of entry on the U.S.-Mexico
23

1 border on or about 1996. He was apprehended nearly two decades after his entry by
2 the U.S. Immigration and Customs Enforcement (“ICE”) under facts and
3 circumstances that place him squarely within ICE’s general detention authority 8
4 U.S.C. § 1226(a). Under that statute, Petitioner is eligible to seek discretionary
5 release on bond from an Immigration Judge (“IJ”). However, due to a reversal of
6 policy announced by ICE in July 2025, and a September 2025 Board of Immigration
7 Appeals (BIA) decision that overturns decades of settled law, Respondents contend
8 that Petitioner is actually detained under 8 U.S.C. § 1225(b)(2). While § 1225(b)
9 requires mandatory detention and does not allow release on bond, it only applies to
10 noncitizens apprehended at the border “seeking admission.” Petitioner therefore
11 brings this action to enjoin Respondents from holding him in mandatory detention
12 without access to a bond hearing; and seeks an order for immediate release, or that
13 Respondents schedule a discretionary bond hearing pursuant to § 1226(a) before an
14 Immigration Judge within 7 days.

15 JURISDICTION AND VENUE

16 2. This action arises under the Immigration and Nationality Act of 1952
17 (“INA”), as amended, 8 U.S.C. § 1101 *et seq.*, and the Due Process Clause of the
18 Fifth Amendment to the United States Constitution. This Court has jurisdiction
19 pursuant to Art. I, § 9, cl. 2

20 3. of the United States Constitution; 28 U.S.C. § 2241 (general grant of
21 habeas authority to the district courts); 28 U.S.C. § 1331 (federal question
22 jurisdiction); 28 U.S.C. §§ 2201, 2202 (Declaratory Judgment Act); and 28 U.S.C. §
23 1651 (All Writs Act).

4. Venue is proper under 28 U.S.C. § 1391(e) because Petitioner is detained at the Northwest ICE Processing Center in Pierce County, within the Western District of Washington. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 494–95 (1973).

PARTIES

5. Gerardo Roman Salgado ([REDACTED]), the Petitioner, is a citizen and native of Mexico and has lived in United States since 1996. He is currently detained by Respondents at the Otay Mesa Detention Center in San Diego, California.

6. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security (“DHS”). He is the cabinet-level secretary responsible for all immigration enforcement in the United States.

7. Respondent David Venturella is the Acting Director of ICE. He is the head of the federal agency responsible for all immigration enforcement in the United States.

8. Respondent Gregory J. Archambeault, the Field Office Director of the ICE San Diego Field Office, is responsible for overseeing ICE operations pertaining to noncitizens within its territorial jurisdiction, such as Petitioner, including detentions, enforcement, and removal operations. His regular place of business is in San Diego, California. He is the immediate legal custodian of Petitioner for purposes of a federal habeas petition.

9. Respondent Todd Blanche is the Acting Attorney General of the United States. The Immigration Judges who decide removal cases and applications for relief

1 from removal do so as his designees.

2 10. Respondent Jeffrey Crawford is the warden of the Farmville Detention
3 Center, where Respondents are currently detaining Petitioner. He is the immediate
4 physical custodian of Petitioner.

5 LEGAL BACKGROUND

6 A. Immigration Detention Legal Framework

7 11. When a noncitizen is alleged to have violated immigration laws, they are
8 generally placed into traditional removal proceedings, during which an immigration
9 judge will determine whether they are removable and then whether they have a legal
10 basis to remain in the United States. 8 U.S.C. § 1229a.

11 11. Detention is authorized for “certain aliens already in the country
12 pending the outcome of removal proceedings under § 1226(a) and 1126(c).” *See*
13 *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). The statute provides that an
14 individual may be subject to either discretionary detention under 8 U.S.C. § 1226(a)
15 generally, or mandatory detention under 8 U.S.C. § 1226(c) if they have been arrested
16 or convicted of certain crimes. Discretionary detention under § 1226(a) has been
17 described as the “default” provision for immigration detention for those subject to
18 traditional removal proceedings. *Id.* at 288. Under § 1226(a), “[e]xcept as provided
19 in subsection (c) of this section, the Attorney General ‘may release’ an alien detained
20 under § 1226(a) ‘on ...bond’ or ‘conditional parole.’” *Id.*

21 12. Alternatively, mandatory detention is authorized for “certain aliens
22 *seeking admission* into the country under §§ 1225(b)(1) and 1225(b)(2),” [emphasis
23 added]. *Jennings*, 583 U.S. at 289. Individuals inspected under § 1225(b) and
24

1 determined to be “applicants for admission” may be subject to mandatory detention
2 under two separate subsections. Applicants for admission include someone:

3 “present in the United States who has not been admitted or who arrives
4 in the United States (whether or not at a designated port of arrival and
5 including an alien who is brought to the United States after having been
interdicted in international or United States waters) shall be deemed for
the purposes of this chapter to be an applicant for admission.”

6
7 8 U.S.C. § 1225(a)(1).

8 13. The first subset, under 8 U.S.C. § 1225(b)(1), may be subject to
9 expedited removal and mandatory detention if they are determined to be an “arriving
10 alien,” and if they have not been physically present in the United States continuously
11 for a two-year period immediately prior. Regulations define an “arriving alien” as:

12 “an applicant for admission coming or attempting to come into the
13 United States at a port-of-entry, or an alien seeking transit through the
14 United States at a port-of-entry, or an alien interdicted in international
or United States waters and brought into the United States by any
means, whether or not to a designated port-of-entry, and regardless of
the means of transport.”

15 8 C.F.R. § 1.2.

16 14. Otherwise, 8 U.S.C. § 1225(b)(2) provides for the detention of
17 “applicant for admission” specifically when “the examining immigration officer
18 determines that an alien *seeking admission* is not clearly and beyond a doubt entitled
19 to be admitted, the alien shall be detained for a proceeding under section 1229a of
20 this title,” i.e. for traditional removal proceedings [emphasis added].

21 15. An “arriving alien” or an applicant for admission “seeking admission”
22 may only be released from detention on parole (which is a form of release on
23 recognizance), under 8 U.S.C. § 1182(d)(5). *Jennings*, 583 U.S. at 288. There is no
24

1 bond available to an arriving alien or applicant for admission seeking admission. *Id.*
2 There is no such thing as a “parole bond” – a release must be either parole under §
3 1182(d)(5) or a bond (conditional parole) under § 1226(a). *Id.*

4 16. For a noncitizen subject to discretionary detention under 8 U.S.C. §
5 1226(a), ICE makes an initial custody determination to either set a bond or hold the
6 individual at no bond. The noncitizen may then seek a review of ICE’s initial custody
7 determination before the IJ (a “custody review hearing”), who has the authority to
8 modify ICE’s custody determination and set bond in a case in which ICE has
9 designated no bond, lower bond when ICE has set a cash bond amount, or deny bond
10 completely. 8 C.F.R. § 1003.19.

11 17. Custody review hearings are separate from hearings in the underlying
12 removal proceedings. 8 C.F.R. § 1003.19(d). If a noncitizen is granted bond by the
13 IJ, he must still appear in immigration court for the IJ to his removability and hear
14 any claim for relief from removal. At a custody review hearing, once jurisdiction
15 over bond is established, the IJ’s inquiry is limited to whether the detainee is a danger
16 to the community or a flight risk, and bond may only be granted when an IJ has
17 determined that the detainee meets his burden of proof that he is neither. *Matter of*
18 *Guerra*, 24 I&N Dec. 37 (BIA 2006).

19 18. For decades, it has been Respondents’ practice to afford § 1226(a)
20 discretionary bond hearings and custody review hearings to those individuals who
21 have been encountered neither at a point of entry nor seeking admission to the United
22 States. *See Rodriguez Vazquez v. Bostock*, 802 F. Supp. 3d 1297, 1325–26 (W.D.
23 Wash. 2025).

B. New ICE memo reinterpreting 8 U.S.C. § 1225(b)(2)

19. On July 8, 2025, Respondent ICE issued new interim guidance that announced a breathtakingly broad interpretation of 8 U.S.C. § 1225(b)(2). *See* ICE memorandum “Interim Guidance Regarding Detention Authority for Applications for Admission.”¹ This memo concerns the detention of “applicants for admission” as defined by § 1225(a)(1). “Effective immediately, it is the position of DHS that such aliens are subject to detention under INA § 235(b) [8 U.S.C. § 1225(b)(2)] and may not be released from ICE custody except by INA § 212(d)(5) [8 U.S.C. § 1182(d)(5)].” *Id.* DHS is explicit that this new policy is a marked deviation from prior interpretation and treatment of affected noncitizens. *Id.* (“For custody purposes, these aliens are now treated in the same manner that “arriving aliens” have historically been treated.”)

20. In addition to the announcement re-interpreting § 1225(b)(2), the memo further clarifies that “[t]he only aliens eligible for a custody determination and release on recognizance, bond or other conditions under INA § 236(a) [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under INA § 237 [8 U.S.C. § 1227], with the exception of those subject to mandatory detention under INA § 236(c) [8 U.S.C. § 1226(c)].” *Id.*

21. Moreover, ICE maintains that “DHS does not take the position that prior releases of applicants for admission pursuant to INA § 236(a) were releases on parole under INA § 212(d)(5) based on this change in legal position.” *Id.* ICE fails to clarify under what legal authority, then, those prior releases were effectuated. Rather, ICE signals the resulting lack of “correct” paperwork is nonetheless permissible. *Id.*

1 (“Accordingly, ERO and HIS are not required to ‘correct’ the release paperwork by
2 issuing INA § 212(d)(5) parole paperwork.”)

3 22. Nationwide implementation of the ICE § 1225(b)(2) mass detention
4 policy ensued.

5 **C. BIA decision in *Matter of Yajure Hurtado***

6 23. On September 5, 2025, the Board of Immigration Appeals (BIA), which
7 oversees all appeals of IJ decisions including custody redeterminations, upheld ICE’s
8 re-interpretation of § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA
9 2025).

10 24. The BIA held that the respondent was an “applicant for admission”
11 within the scope of § 1225(b), and therefore subject to mandatory detention.

12 25. The BIA characterized the issue before it as “one of statutory
13 construction: Does the INA require that *all* applicants for admission, even those like
14 the respondent who have entered without admission or inspection and have been
15 residing in the United States for years without lawful status, be subject to mandatory
16 detention for the duration of their immigration proceedings, and thus the Immigration
17 Judge lacks authority over a bond request filed by an alien in this category?”
18 [emphasis added]. *Id.* at 220.

19 26. The BIA reasoned that individuals “who surreptitiously cross into the
20 United States remain applicants for admission until and unless they are lawfully
21 inspected and admitted by an immigration officer.” *Id.* at 228.

22 27. The BIA acknowledged the decades of precedent preceding its decision
23 that authorized release of individuals present without having been inspected and
24

1 admitted or paroled under § 1226(a). *Id.* at 225 n.6 (“We acknowledge that for years
2 Immigration Judges have conducted bond hearings for aliens who entered the United
3 States without inspection. However, we do not recall either DHS or its predecessor,
4 the Immigration and Naturalization Service, previously raising the current issue that
5 is before us. In fact, the supplemental information for the 1997 Interim Rule titled
6 ‘Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens;
7 Conduct of Removal Proceedings; Asylum Procedures,’ 62 Fed. Reg. 10312, 10323
8 (Mar. 6, 1997), reflects that the Immigration and Naturalization Service took the
9 position at that time that ‘[d]espite being applicants for admission, aliens who are
10 present without having been admitted or paroled (formerly referred to as aliens who
11 entered without inspection) will be eligible for bond and bond redetermination.’”)

12 28. Ultimately, the BIA upheld the decision that the IJ
13 lacked jurisdiction under 8 U.S.C. § 1225(b)(2) to consider the respondent for
14 discretionary bond. *Id.* at 229.

15 29. The BIA decision is binding on all immigration judges nationwide.

16 30. Respondents’ new policy and interpretation of 8 U.S.C. § 1225(b)(2)
17 stand to sweep millions of noncitizens into mandatory detention, without any
18 consideration for release on bond (regardless of their ties to their community or lack
19 of dangerousness or flight risk). *Rosado*, 2025 WL 2337099, at *11 (“It has been
20 estimated that this novel interpretation would require the detention of millions of
21 immigrants currently residing in the United States”).

22 31. This Court has rejected Respondents’ interpretation of 8 U.S.C. §
23 1225(b) as inconsistent with the “canons of interpretation, legislative history, and
24

1 longstanding agency practice.” *See Rodriguez Vazquez*, 802 F. Supp. 3d at 1335–36.
 2 *See also Mejia Lopez v. Noem*, 2026 WL 323057, at *4 (W.D. Wash. Feb. 6, 2026).

3 32. While the Fifth Circuit and the Eighth Circuit have upheld the
 4 Government’s interpretation of “applicant for admission” in 8 U.S.C. § 1225(b)(2),
 5 *see Herrera Avila v. Bondi*, 2026 WL 819258 (8th Cir. Mar. 25, 2026); *Buenrostro-*
 6 *Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026), these decisions are neither binding
 7 on this Court nor persuasive in their reasoning. *See Herrera Avila*, 2026 WL 819258
 8 at *6–8 (Erickson, J., dissenting) and *Buenrostro-Mendez*, 166 F.4th at 509–21
 9 (Douglas, J., dissenting). Moreover, the Court has expressly disagreed with both
 10 decisions. *See, e.g., Bazard v. ICE Field Office Dir.*, 2026 WL 926052, at *2 (W.D.
 11 Wash. Apr. 6, 2026) (disagreeing with *Buenrostro-Mendez*); *Gomez Candelo v.*
 12 *Noem*, 2026 WL 879049, at *2 (W.D. Wash. Mar. 31, 2026) (same). *See also S.K. v.*
 13 *Hermosillo*, 2026 WL 936458, at *2 n.1 (acknowledging but rejecting *Herrera Avila*
 14 as “inconsistent with this Court’s view of the statutory text and relevant Ninth Circuit
 15 and Supreme Court authority interpreting it.”).

16 **E. Class Action In Maldonado Bautista**

17 33. On February 18, 2026, the U.S. District Court for the Central District of
 18 California court expressly vacated *Yajure Hurtado. Maldonado Bautista v.*
 19 *Santacruz*, ---F.Supp.3d---, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at
 20 *12 (C.D. Cal. Feb. 18, 2026). The California district court also required the
 21 government to provide written notice to all potential members of a previously
 22 certified “Bond Eligible Class,” *id.*, consisting of:

23 “All noncitizens in the United States without lawful status who (1) have
 24 entered or will enter the United States without inspection; (2) were not

1 or will not be apprehended upon arrival; and (3) are not or will not be
 2 subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231
 at the time the Department of Homeland Security makes an initial
 custody determination.”

3 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9
 4 (C.D. Cal. Nov. 25, 2025).

5 34. Additionally, the California district court ordered that the Government
 6 notify potential class members that they may be entitled to seek release on bond or
 7 conditional parole under 8 U.S.C. § 1226(a) through a three-step process. *Maldonado*
 8 *Bautista v. Santacruz*, ---F.Supp.3d---, 2026 WL 468284, at *12 (C.D. Cal. Feb. 18,
 9 2026). First, the Government must “promptly serve the Notice on all noncitizens who
 10 are newly arrested or detained by immigration officers and who [the Government]
 11 reasonably believes may be members of the class.” *Id.* Second, in relevant part, the
 12 Government must “provide confirmation” on DHS’ Forms I-213, Record for
 13 Deportability/Inadmissible Alien, that “the Notice was provided to potential Bond
 14 Eligible Class members in their best language within 48 hours of arrest and
 15 detention.” *See id.* at *13. Third, the Government must “provide the noncitizen with
 16 access to a telephone to call an attorney within one hour after the noncitizen receives
 17 the Notice.” *Id.*¹

18 FACTUAL ALLEGATIONS

19 35. Mr. Roman Salgado was born in 1978. He is a native and citizen of
 20 Mexico.

21
 22
 23 ¹ The Government appealed the decision to the Ninth Circuit, who then granted a
 24 temporary administrative stay of the California district court’s order. Order,
Maldonado Bautista v. U.S. Dep’t of Homeland Security, No. 26-1044, Dkt. No. 5.1
 (9th Cir. Mar. 6, 2026).

36. Mr. Roman Salgado entered the United States without inspection in or around 1996. He was not encountered by U.S. immigration officials at that time.

37. Petitioner resides in Powder Springs, Georgia, with his wife, his twenty-two-year-old United States citizen son, his twenty-year-old United States citizen sister, and his fifteen-year-old United States citizen brother. He has established a stable home and longstanding family ties in the United States.

38. Petitioner was granted employment authorization under the (c)(10) category and has maintained valid employment authorization for years. His current Employment Authorization Document ("EAD") remains valid through August 16, 2029. *See* Ex. 1, Petitioner's Employment Authorization Document.

39. Petitioner was initially detained in Florida in connection with his criminal matter. After remaining in ICE custody in Florida for approximately two weeks, Petitioner was transferred to the Otay Mesa Detention Center in San Diego, California, on or around July 7, 2026, where he has remained detained ever since.

40. While Petitioner was detained in Florida, his family attempted to post bond on his behalf. However, although Petitioner had already been transferred to California, ICE records continued to reflect that he remained detained in Florida, preventing his family from securing his release. Following his transfer to the Otay Mesa Detention Center, Petitioner appeared before the Immigration Court for a bond hearing. During that hearing, counsel observed that the Immigration Judges were declining to exercise jurisdiction over bond requests filed by similarly situated detainees. In light of those circumstances, counsel withdrew Petitioner's bond request rather than proceed with a hearing that would not be considered on the merits.

Petitioner has not received an individualized bond determination and remains detained at the Otay Mesa Detention Center.

41. Petitioner's removal proceedings were docketed on June 25, 2026. He has an upcoming in-person Master Calendar Hearing scheduled for August 3, 2026, at 8:00 AM, and he is not subject to a final order of removal. See EOIR Automated Case Information System (available at: <https://acis.eoir.justice.gov/> (last visited on July 28, 2026)):

The screenshot shows the EOIR Automated Case Information System interface for the case of ROMAN-SALGADO, GERARDO. The page includes a header with navigation icons and a search bar. The main content area is divided into four sections: Next Hearing Information, Court Decision and Motion Information, BIA Case Information, and Court Contact Information. The Next Hearing Information section states that the upcoming MASTER hearing is IN PERSON on August 3, 2026 at 8:00 AM, presided by Judge Robinson JR., Eugene H., at the court address 7488 CALZADA DE LA FUENTE, SAN DIEGO, CA 92154. The Court Decision and Motion Information section indicates that the case is pending. The BIA Case Information section states that no appeal was received for this case. The Court Contact Information section provides the court address 7488 CALZADA DE LA FUENTE, OTAY MESA, CA 92154 and the phone number (619) 661-5600.

← → ↺ 🏠 📄 acis.eoir.justice.gov/en/caseInformation 🔍 📄 ☆ 📄 📄 📄 Acción necesaria ⋮

Home > ROMAN-SALGADO, GERARDO

Automated Case Information

Name: ROMAN-SALGADO, GERARDO | A-Number: | Docket Date: 6/25/2026

Next Hearing Information

Your upcoming **MASTER** hearing is **IN PERSON** on **August 3, 2026 at 8:00 AM.**

JUDGE
Robinson JR., Eugene H.

COURT ADDRESS
7488 CALZADA DE LA FUENTE
SAN DIEGO, CA 92154

Court Decision and Motion Information

This case is pending.

BIA Case Information

No appeal was received for this case.

Court Contact Information

If you require further information regarding your case, or wish to file additional documents, please contact the immigration court.

COURT ADDRESS
7488 CALZADA DE LA FUENTE
OTAY MESA, CA 92154

PHONE NUMBER
(619) 661-5600

42. Mr. Roman Salgado is currently detained at the Otay Mesa Detention Center in San Diego, California, within the territorial jurisdiction of this Court. See ICE Detainee Locator information (available at <https://locator.ice.gov/> (last visited on July 28, 2026)):

The screenshot shows the ICE Detainee Locator website. At the top, there is a navigation bar with a back arrow, a forward arrow, a refresh icon, a home icon, and the URL "locator.ice.gov/odls/#/details". To the right of the URL are icons for a star, a user profile, a document, and a search icon. Below the navigation bar is a button labeled "< BACK TO RESULTS". The main heading is "Facility Page". Underneath, it says "Detention Information For:" followed by the name "GERARDO ROMAN-SALGADO". Below the name, it says "Country of Birth: Mexico" and "A-Number: [REDACTED]". Further down, it says "Current Detention Facility:" followed by the address "OTAY MESA DETENTION CENTER, 7488 CALZADA DE LA FUENTE, NA, SAN DIEGO, CA 92154" and "Visitor Information: (619) 671-8724". At the bottom of the form is a button labeled "MORE INFORMATION >".

43. Petitioner's continued detention has imposed significant financial and emotional hardship on his family. As the primary breadwinner, Petitioner provides essential financial support for his household, including his wife, his fifteen-year-old brother, and his twenty-year-old sister, who is a full-time college student. Without Petitioner's income, his family has struggled to meet their financial obligations. His detention has also taken a profound emotional toll on his loved ones. His wife has experienced depression and has become increasingly fearful and anxious since his detention. His children have likewise been deeply affected by his absence, and his

1 youngest son has become withdrawn and no longer wishes to leave the house.
2 Petitioner's continued detention has deprived his family of both his financial support
3 and his daily presence during this difficult time.

4 44. All Respondents consider that the Petitioner is detained pursuant to 8
5 U.S.C. § 1225(b)(2). *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).
6 Accordingly, it would be futile for Petitioner to request a bond hearing before an IJ.
7 Exhaustion of administrative remedies would therefore be futile.

8 **FIRST CLAIM FOR RELIEF:**
9 **No-Bond Detention in Violation of 8 U.S.C. § 1226(a)**

10 45. Petitioner re-alleges and incorporates by reference the preceding
11 paragraphs 1-44.

12 46. Since the Petitioner is not an applicant for admission “seeking
13 admission” or “an arriving alien” subject to 8 U.S.C. §§ 1225(b)(1) or (b)(2) and has
14 no disqualifying criminal arrests or convictions subject to 8 U.S.C. § 1226(c), he is
15 entitled to a bond redetermination hearing by an immigration judge pursuant to 8
16 U.S.C. § 1226(a).

17 47. In fact, ICE appeared to recognize that Petitioner was eligible for a bond
18 hearing, given that the ICE officers had issued him the Notice that the California
19 district court, at the time, had required the Government to give noncitizens whose
20 detention is governed by 8 U.S.C. § 1226(a).

21 48. Respondents’ actions, as set forth herein, violate Petitioner’s statutory
22 right to a bond redetermination hearing in front of an immigration judge.
23 Consequently, Respondents should “release Petitioner from detention or provide him
24

1 a bond hearing on the merits pursuant to 8 U.S.C. § 1226(a).” *See Castillo Aredondo*
2 *v. Lyons*, 2025 WL 3436812, at *4 (W.D. Oct. 15, 2025).

3 **SECOND CLAIM FOR RELIEF:**
4 **Violation of the Due Process Clause of the Fifth Amendment to the U.S.**
5 **Constitution**

6 49. Petitioner re-alleges and incorporates by reference the preceding
7 paragraphs 1–44.

8 50. Immigration detention is civil, not criminal, in nature. There are only
9 two permissible reasons for immigration detention: to avoid flight risk, and to avoid
10 danger to the community. “To determine whether a civil detention violates a
11 detainee's due process rights, courts apply the three-part test set forth in *Mathews v.*
12 *Eldridge*.” *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 685 (W.D. Tex. 2025)
(citing *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)):

13 First, the private interest that will be affected by the official action; second, the
14 risk of an erroneous deprivation of such interest through the procedures used,
15 and the probable value, if any, of additional or substitute procedural
16 safeguards; and, finally, the Government's interest, including the function
involved and the fiscal and administrative burdens that the additional or
substitute procedural requirement would entail.

17 *Mathews*, 424 U.S. at 335.

18 51. After entering the United States unlawfully, Petitioner went on to
19 develop ties to the community of the course of nearly two decades. Petitioner is
20 therefore a “person” within the meaning of the Due Process Clause of the Fifth
21 Amendment to the U.S. Constitution and has a liberty interest in freedom from
22 physical restraint.
23
24

1 52. First, Petitioner has a strong private interest at
2 stake, i.e. his own liberty. As held in *Lopez-Arevalo*, another case involving a
3 detainee who was rearrested following a prior release on conditional bond, “the
4 interest in being free from physical detention by [the] government” is “the most
5 elemental of liberty interests[.]” 801 F. Supp. 3d at 687 (quoting *Martinez v. Noem*,
6 2025 WL 2598379, at *2 and *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)).

7 53. Second, the risk of erroneous deprivation to the Petitioner is high. The
8 Government has not only deprived him of his liberty, but also of the opportunity to
9 seek release from an immigration judge by maintaining that he does not have the
10 right to that opportunity. Moreover, even when ordered by this Court to recognize
11 the right of noncitizens similarly situated to Petitioner’s to a bond hearing,
12 Respondents have not complied. See *Rodriguez Vazquez v. Hermosillo*, 2026 WL
13 102461, at *3 (W.D. Wash. Jan. 14, 2026).

14 54. Third, the Government could only present minimal interests in
15 continuing to detain the Petitioner without affording him a bond hearing. The
16 Government’s interest is based on a novel and dubious interpretation of immigration
17 law that the federal Judiciary has repeatedly rejected, not on an individualized
18 assessment of his risk of flight or dangerousness to the community. Any resource
19 arguments fall flat because the cost of a mere bond hearing is surely dwarfed
20 by accruing expenditures to finance his ongoing detention. *Lopez-Arevalo*, 801 F.
21 Supp. 3d at 687. Moreover, the costs of a bond hearing are those that the government
22 has allotted for decades without issue in these contexts. *Id.* Most importantly, “[Mr.
23 Roman Salgado] is not asking the Court to enjoin detention altogether, he only
24

1 requests that Respondents justify his detention at a pre-deprivation
2 hearing.” *Rodriguez-Diaz*, 2025 WL 3011852, at *13. The same is true here.

3 55. All *Mathews* factors militate in favor of Mr. Roman Salgado, and
4 Respondents’ actions in detaining him without a bond hearing before a neutral and
5 detached magistrate deprives him of his rights without due process of law.

6 **PRAYER FOR RELIEF**

7 56. Petitioner respectfully requests that this Court assume jurisdiction over
8 this matter and enter an order:

- 9 a. Issuing an Order to Show Cause, ordering Respondents to justify the
10 basis of Petitioner’s detention in fact and in law, forthwith;
- 11 b. Enjoining Respondents from holding Petitioner is subject to detention
12 under 8 U.S.C. § 1225(b)(2) and denying them a bond hearing on that
13 basis;
- 14 c. Enjoining Respondents from re-arresting Petitioner subject to §
15 1225(b)(2);
- 16 d. Order Petitioner’s immediate release from custody;
- 17 e. Ordering, in the alternative, Petitioner’s immediate release and that
18 Respondents conduct a bond hearing for Petitioner pursuant to 8
19 U.S.C. § 1226(a) within 7 days;
- 20 f. Retaining jurisdiction over this matter to ensure Respondents’
21 compliance with the Court’s orders;
- 22
23
24

1 g. Granting the writ of habeas corpus and order Respondents to release
2 Petitioner forthwith, or upon payment of the bond as ordered by the
3 Immigration Judge; and

4 h. Granting any other relief that this Court deems just and proper.

5
6 Respectfully submitted,

7
8 Dated: July 28, 2026

/s/ Courtney E. Moran
Courtney E. Moran, Esq.
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Counsel for Petitioner

VERIFICATION OF PETITIONER

On behalf of Gerardo Roman Salgado, the party in custody, I verify the facts contained in the Petition for Writ of Habeas Corpus, upon information and belief, having reviewed the relevant records and pleadings. Mr. Roman Salgado has not verified the petition himself because he is detained in a different county from my office and home.

Dated: July 28, 2026

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. I furthermore will send a copy by certified U.S. mail, return receipt requested, to:

Civil Process Clerk
U.S. Attorney's Office for the Southern
District of California
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8807

Office of the Principal Legal
Advisor
U.S. Immigration and Customs
Enforcement
500 12th Street SW, Mail Stop 5902
Washington, DC 20536-5902

Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW, Mail Stop 0485
Washington, DC 20528-0485

Warden, Otay Mesa Detention Center
7488 Calzada De La Fuente
San Diego, Ca 92154

Todd Blanche
Attorney General of the U.S.
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Respectfully submitted,

Dated: July 28, 2026

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