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

7 Javier Alfonso Ariza Garcia,
Petitioner,

Case No. '26CV2241 RBM MSB

Agency No. 

8 v.

9 Attorney General of the United States,
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**

10 Markwayne Mullin, Secretary of
11 Homeland Security;

12 Todd Lyons, 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.
21

INTRODUCTION

1. Petitioner, Javier Alfonso Ariza Garcia ( (hereinafter “Petitioner” or “Mr. Ariza Garcia”), a 38-year-old Colombian national, has been detained at the Otay Mesa Detention Center, in violation of his due process rights, since his placement in removal proceedings a second time on March 11, 2026. Ex. A, Declaration of Attorney Cabrera, ¶ 10. He has been a client of our office since 2024. *Id.* at ¶ 1.

2. This petition alleges Mr. Ariza Garcia has been re-detained unjustly in violation of his Constitutional right to liberty. Therefore, he requests this court make an order to show cause; that he may not be transferred during the pendency of this petition; and that he be released immediately upon the conclusion of the review of all filings. Alternatively, we request an order declaring Petitioner to be in custody pursuant to 8 U.S.C. § 1226(a) and requiring a bond hearing before a fair and neutral arbiter.

3. Petitioner prefers not to file a temporary restraining order given the clear legal precedent in this case substantiating Petitioner’s claims, and would instead request Respondents be required to provide a response within three days or alternatively timing pursuant to Chief Judge Order No. 144.

JURISDICTION

4. This action arises under the Constitution of the United States and the Immigration

1 and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

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

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

8 7. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of
9 jurisdiction. Petitioner is not contesting the commencement or adjudication of
10 removal proceedings against him, nor is he raising an issue with respect to the
11 execution of removal. The petition is independent of the removal proceedings and
12 all questions related to the commencement of removal proceedings or any part of
13 the removal process. “[C]laims that are independent of or collateral to the removal
14 process do not fall within the scope of § 1252(b)(9).” *J.E.F.M. v. Lynch*, 837 F.3d
15 1026, 1032 (9th Cir. 2016). Additionally, Section 1252(g) “does not prohibit
16 challenges to unlawful practices merely because they are in some fashion
17 connected to removal orders.” *Ibarra-Perez v. United States*, 154 F.4th 989, 997
18 (9th Cir. 2025). Thus, this Court is not stripped of jurisdiction by Sections 1252(g)
19 and 1252(b)(9).

20 **VENUE**

1 8. Venue is proper because Petitioner is detained at the Otay Mesa Detention Center
2 in the County of San Diego, which is within the jurisdiction of this District.
3 Further, a substantial part of the events or omissions giving rise to his claims
4 occurred in this District (Petitioner was arrested outside of his vehicle close to his
5 home in Oceanside, California) and no real property is involved in this action. 28
6 U.S.C. § 1391(e). See Ex. A, ¶ 10.

7 **REQUIREMENTS OF 28 U.S.C. § 2243**

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

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

18 **PARTIES**

19 ***Petitioner***

20 11. Petitioner, Mr. Ariza Garcia, is a Colombian national who is in custody at the
21 Otay Mesa Detention Center located at 7488 Calzada De La Fuente, San Diego,

1 CA 92154. When at liberty, he, his wife, and their son, reside at their home in
2 Oceanside, CA. He is in the custody, and under the direct control, of Respondents
3 and their agents.

4 ***Respondents***

5 12. Respondent U.S. Attorney General¹ is sued in their official capacity as the
6 Attorney General of the United States and the senior official of the U.S.
7 Department of Justice (“DOJ”). In that capacity, they have the authority to
8 adjudicate removal cases and to oversee the Executive Office for Immigration
9 Review (“EOIR”), which administers the immigration courts and the Board of
10 Immigration Appeals. Respondent U.S. Attorney General is a legal custodian of
11 Petitioner.

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

19
20 ¹ According to the federal rules, a U.S. government official may be named by official
21 title instead of the official’s name. Fed. R. Civ. P. 17(d). Current U.S. Attorney
General Pamela Bondi’s termination was announced on April 2, 2026.

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. Ariza Garcia, a 38-year-old Colombian national, who is a husband
15 and father to four children. *Id.* ¶ 5. His eldest resides in San Bernardino County,
16 his second oldest resides with him and his wife in Oceanside, CA and his
17 youngest two still reside in Colombia. *Id.*

18 19. Mr. Ariza Garcia's last entry to the United States was in September 2023 at or
19 near Tecate, CA, without inspection, admission. *Id.* ¶ 4; *see also* Ex. B, Notices to
20 Appear ("NTA"). After he entered the United States he turned himself into
21

1 immigration authorities and was ultimately released on his own recognizance after
2 being served a Notice to Appear in removal proceedings. Ex B, Notice to Appear,
3 dated September 2023 and Ex C, Order of Release on Recognizance. He has
4 remained living in the United States since without departure. Ex. A, ¶ 4.

5 20. While in removal proceedings, he timely applied for protections under asylum
6 and related relief. Ex. A, ¶ 8. On September 30, 2024, an immigration judge
7 terminated his removal proceedings on an *unopposed* motion to terminate
8 proceedings. Ex. D, Order.

9 21. In approximately January 2025, Mr. Ariza Garcia, with the help of counsel,
10 applied for asylum and related relief with the U.S. Citizenship and Immigration
11 Services, an agency housed under the Department of Homeland Security
12 (“USCIS”), just like ICE. Ex. A, ¶ 9. USCIS issued a receipt notice for his
13 application on March 7, 2025, showing a backdated received date of September 6,
14 2024, which was the date Mr. Ariza Garcia filed the application in immigration
15 court. *Id.* In November 2025, he paid the new mandatory annual asylum fee of
16 \$100 to USCIS. *Id.*

17 22. Mr. Ariza Garcia did not have any issues with law enforcement since his release
18 on recognizance in September 2023 and since the termination of his removal
19 proceedings and filing affirmative immigration relief applications, but ICE still
20 detained him while he was standing outside of his vehicle near his house on
21

1 March 11, 2026. *Id.* at ¶ 11. Mr. Ariza Garcia told the officers who approached
2 him and grabbed him that he had a pending application with USCIS and a valid
3 work permit, but the officers still took him into custody and detained him at the
4 Otay Mesa Detention Center. *Id.*

5 23. DHS has charged Petitioner as being inadmissible under 8 U.S.C. §
6 1182(a)(6)(A)(i), as someone who entered the United States without inspection
7 and is present without admission. Ex. B.

8 24. Therefore, upon consideration of the legal bases below, Mr. Ariza Garcia requests
9 this court issue a habeas order requiring he be immediately released from custody
10 because there is no basis for his re-detention or that he be provided a lawful bond
11 hearing before a fair, neutral, and open-minded arbiter so that his unlawful
12 detention does not continue.

13 LEGAL FRAMEWORK

14 25. The Immigration and Nationality Act (“INA”) prescribes three basic forms of
15 detention for the vast majority of noncitizens in removal proceedings conducted
16 pursuant to 8 U.S.C. § 1229a. The INA provides for mandatory detention of
17 noncitizens subjected to an expedited removal order imposed pursuant to 8 U.S.C.
18 § 1225(b)(1) and for certain other noncitizen applicants for admission to the U.S.
19 who are deemed not clearly entitled to be admitted. *See* 8 U.S.C. § 1225(b)(2).

1 26. Immigration detention “has two regulatory goals: ensuring the appearance of
2 [noncitizens] at future immigration proceedings and preventing danger to the
3 community.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (internal citations
4 omitted); *see also* 8 U.S.C. 1226(a), (b); 8 C.F.R. 1236.1(c)(8).

5 27. Someone like Mr. Ariza Garcia who was previously released from custody has
6 been deemed, to be neither a flight risk nor a danger. 8 C.F.R. 1236.1(c)(8)
7 (authorizing release of noncitizens under 1226(a) if they “would not pose a
8 danger to property or persons,” and are “likely to appear for any future
9 proceeding”); 8 C.F.R. 212.5(b) (authorizing parole from custody of noncitizens
10 deemed “neither a security risk nor a risk of absconding”).

11 28. In cases of individuals previously released by DHS, re-detention under section
12 1226(a) requires an individualized determination of a material change in
13 circumstances relating to flight risk or danger. *See Ortega*, 415 F.Supp.3d at 968
14 (“DHS re-arrests individuals only after a ‘material’ change in circumstances.”
15 (citing *Saravia*, 280 F.Supp.3d at 1197)); *see also Matter of Sugay*, 171 I&N Dec.
16 637, 640 (BIA 1981) (“[W]here a previous bond determination has been made by
17 an immigration judge, no change should be made by [DHS] absent a change of
18 circumstance.”).

19 29. The Constitution establishes due process rights for “all ‘persons’ within the
20 United States, including [noncitizens], whether their presence here is lawful,
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1 unlawful, temporary, or permanent.” *Hernandez v. Sessions*, 872 F.3d 976, 990
2 (9th Cir. 2017) (quoting *Zadvydas v. Davis*, 533 U.S. 678 (2001)). These due
3 process rights are both substantive and procedural.

4 30. “The touchstone of due process is protection of the individual against arbitrary
5 action of government,” *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974), including
6 “the exercise of power without any reasonable justification in the service of a
7 legitimate government objective.” *Cnty. of Sacramento v. Lewis*, 523 U.S. 833,
8 846 (1998).

9 31. These protections extend to noncitizens facing detention, as “[i]n our society
10 liberty is the norm, and detention prior to trial or without trial is the carefully
11 limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987).
12 Accordingly, “[f]reedom from imprisonment—from government custody,
13 detention, or other forms of physical restraint—lies at the heart of the liberty that
14 [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

15 32. Substantive due process thus requires that all forms of civil detention—including
16 immigration detention—bear a “reasonable relation” to a non-punitive purpose.
17 *See Jackson v. Indiana*, 406 U.S. 715, 738 (1972). The Supreme Court has
18 recognized only two permissible non-punitive purposes for immigration detention:
19 ensuring a noncitizen’s appearance at immigration proceedings and preventing
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1 danger to the community. *Zadvydas*, 533 U.S. at 690–92; *see also Demore v. Kim*,
2 538 U.S. 510, 519–20, 527–28, 31 (2003).

3 33. Generally, “the Constitution requires some kind of a hearing *before* the State
4 deprives a person of liberty or property.” *Zinerman v. Burch*, 494 U.S. 113, 127
5 (1990) (emphasis added). This is so even in cases where that freedom is lawfully
6 revocable. *See Hurd v. D.C., Gov’t*, 864 F.3d at 683 (citing *Young v. Harper*, 520
7 U.S. 143, 152 (1997) (re-detention after pre-parole conditional supervision
8 requires pre-deprivation hearing)); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973)
9 (same, in probation context); *Morrissey v. Brewer*, 408 U.S. 471 (1972) (same, in
10 parole context).

11 34. After an initial release from custody on conditions, even a person paroled
12 following a conviction for a criminal offense for which they may lawfully have
13 remained incarcerated, has a protected liberty interest in that conditional release.
14 *Morrissey* at 408 U.S. at 482. As the Supreme Court recognized, “[t]he parolee
15 has relied on at least an implicit promise that parole will be revoked only if he
16 fails to live up to the parole conditions.” *Id.* “By whatever name, the liberty is
17 valuable and must be seen within the protection of the [Constitution].” *Id.*

18 35. This reasoning applies with equal if not greater force to people who were granted
19 release on their own recognizance from civil immigration detention and were
20 apprehended before their removal order became final, like Petitioner. Noncitizens

1 living in the United States, like Petitioner, have a protected liberty interest in their
2 ongoing freedom from confinement. *See Zadvydas*, 533 U.S. at 690. “Given the
3 civil context [of immigration detention], [the] liberty interest [of noncitizens
4 released from custody] is arguably greater than the interest of parolees in
5 *Morrissey*.” *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019) (citing
6 *Morrissey*, 408 U.S. at 487).

7 36. Moreover, even should Petitioner’s detention be deemed permissible, he remains
8 eligible for a bond hearing for the same reasons provided in *Maldonado Bautista*²,
9 that Section 1226(a) governs the detention of noncitizens “inside the United
10 States” and “present in the country.” *Jennings v. Rodriguez*, 583 U.S. 281, 288–89
11 (2018).

12 CLAIM FOR RELIEF

13 CLAIM ONE

14 Violation of the Fifth Amendment to the United States Constitution (Substantive Due Process – Detention)

15 37. Petitioner incorporates by reference the allegations of fact set forth in the
16 preceding paragraphs.
17

18
19 ² Notably, on March 6, 2026, the U.S. Court of Appeals for the Ninth Circuit granted
20 an administrative stay of the *Maldonado Bautista* decision “insofar as the district
21 court’s judgment extends beyond the Central District of California.” *Maldonado
Bautista, et al. v. United States Department of Homeland Security, et al.*, No. 26-1044,
ECF No. 5 (9th Cir. March 6, 2026).

1 38. The Due Process Clause of the Fifth Amendment protects all “person[s]” from
2 deprivation of liberty “without due process of law.” U.S. Const. amend.
3 V. “Freedom from imprisonment—from government custody, detention, or other
4 forms of physical restraint—lies at the heart of the liberty that [the Due Process]
5 Clause protects.” *Zadvydas*, 533 U.S. at 690.

6 39. Immigration detention is constitutionally permissible only when it furthers the
7 government’s legitimate goals of ensuring the noncitizen’s appearance during
8 removal proceedings and preventing danger to the community. *See id.* When the
9 Government has previously decided to release a noncitizen and there is no
10 evidence in the record of any changed circumstance that might have caused the
11 Government to reconsider its initial decision to release the noncitizen, courts
12 have found the Government’s interest in re-detention is low. *Doe v. Chestnut*,
13 No. 1:25-cv-01372CDB (HC), 2025 WL 3295154, at *10 (E.D. Cal. Nov. 26,
14 2025) (citations omitted).

15 40. “[E]ven when ICE has the initial discretion to detain or release a noncitizen
16 pending removal proceedings, after that individual is released from custody she
17 has a protected liberty interest in remaining out of custody.” *Pinchi v. Noem*, 792
18 F. Supp 3d 1025, 1032 (N.D. Cal. 2025) (citing *Romero v. Kaiser*, No. 22-cv-
19 02508, 2022 WL 1443250, at *2 (N.D. Cal. May 6, 2022); *Jorge M. F. v.*
20 *Wilkinson*, No. 21-cv-01434, 2021 WL 783561, at *2 (N.D. Cal. Mar. 1, 2021);

1 *Ortiz Vargas v. Jennings*, No. 20-cv-5785, 2020 WL 5074312, at *3 (N.D. Cal.
2 Aug. 23, 2020); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019)).

3 41. Many courts in this district have joined a number of district courts to recognize
4 that noncitizens have a significant liberty interest in “continued freedom after
5 release on own recognizance,” *Alegria Palma v. Larose*, No. 25-cv-1942-BJC-
6 MMP, ECF No. 14, at *6 (S.D. Cal. Aug. 11, 2025) (emphasis added), and in
7 “freedom from imprisonment” after “the government grants a [noncitizen] parole
8 into the country,” *Sanchez v. LaRose*, No. 25-CV-2396-JESMMP, 2025 WL
9 2770629, at *3 (S.D. Cal. Sept. 26, 2025) (emphasis added). *See also Miguel v.*
10 *Bondi et al.*, 26-CV-1636 JLS (SBC) (S.D. Cal. Mar. 27, 2026) (“Petitioner has a
11 protected liberty interest in remaining out of custody.”); *Prieto-Cordova*, No. 25-
12 cv-2824-CAB-DDL, 2025 WL 3228953 (S.D. Cal. Nov. 19, 2025); *Faizyan v.*
13 *Casey*, No. 25-cv-02884-RBM-JLB, 2025 WL 3208844 (S.D. Cal. Nov. 17,
14 2025); *Ramazan M. v. Andrews*, No. 25-cv-01356-KES-SKO (HC), 2025 WL
15 3145562 (E.D. Cal. Nov. 20, 2025); *Gomez Vilela v. Robbins*, No. 25-cv-01393-
16 KES-HBK (HC), 2025 WL 3101334 (E.D. Cal. Nov. 6, 2025); *Pablo Sequen v.*
17 *Albarran*, No. 25-cv-06487-PCP, 2025 WL 2935630 (N.D. Cal. Oct. 15, 2025);
18 *Hyppolite v. Noem*, No. 24-cv-4304 (NRM), 2025 WL 2829511 (E.D. N.Y. Oct.
19 6, 2025); *Lopez-Arevelo v. Ripa*, No. EP-25-CV-337-KC, 2025 WL 2691828
20 (W.D. Tex. Sept. 22, 2025); *Ramirez Tesara v. Wamsley*, No. 25-cv-01723-

1 MJPTLF, 2025 WL 2637663 (W.D. Wash. Sept. 12, 2025); *E.A. T.-B. v.*
2 *Wamsley*, No. C25-1192-KKE, 2025 WL 2402130 (W.D. Wash. Aug. 19, 2025).

3 42. Petitioner is not a flight risk or danger to the community, as evidenced by his
4 complete lack of criminal history. Accordingly, Petitioner is being detained in
5 violation of the Due Process Clause of the Fifth Amendment.

6 CLAIM TWO

7 Violation of the Fifth Amendment to the United States Constitution (Procedural Due Process – Detention)

8 43. As part of the liberty protected by the Due Process Clause, Petitioner has a
9 weighty liberty interest in avoiding re-detention after his release. *See Young v.*
10 *Harper*, 520 U.S. 143, 146–47 (1997); *Gagnon v. Scarpelli*, 411 U.S. 778, 781–
11 82 (1973); *Morrissey*, 408 U.S. at 482–83; *see also Ortega*, 415 F. Supp. 3d at
12 969–70 (holding that a noncitizen has a protected liberty interest in remaining out
13 of custody following an IJ’s bond determination).

14 44. Accordingly, “[i]n the context of immigration detention, it is well-settled that
15 due process requires adequate procedural protections to ensure that the
16 government’s asserted justification for physical confinement outweighs the
17 individual’s constitutionally protected interest in avoiding physical
18 restraint.” *Hernandez*, 872 F.3d at 990 (cleaned up); *Zinerman*, 494 U.S. at 127
19 (Generally, “the Constitution requires some kind of a hearing *before* the State
20 deprives a person of liberty or property.”). In the immigration context, for such
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1 hearings to comply with due process, the government must bear the burden to
2 demonstrate, by clear and convincing evidence, that the noncitizen poses a flight
3 risk or danger to the community. *See Singh v. Holder*, 638 F.3d 1196, 1203 (9th
4 Cir. 2011); *see also Martinez v. Clark*, 124 F.4th 775, 785, 786 (9th Cir. 2024).

5 45. Petitioner's re-detention without a pre-deprivation hearing violated due
6 process. Over two years after his release in 2023, Respondents re-detained
7 Petitioner with no notice, no explanation of the justification for his re-detention,
8 and no opportunity to contest his re-detention in front of a neutral adjudicator
9 before being taken into custody.

10 46. Petitioner has a profound personal interest in his liberty. *See Alvarenga Matute v.*
11 *Wofford*, 2025 WL 2996577, * 4 (E.D. Ca. Oct. 24, 2025) (confirming that
12 noncitizen with an outstanding removal order had a protected liberty interest due
13 to his previous conditional release).

14 47. Prior to his re-detention in March of 2026, Petitioner had no notice of
15 Respondents' intention to re-detain him and no opportunity to contest that action.
16 Because the private interest in freedom from immigration detention is substantial,
17 due process requires the government to bear the burden of proving by clear and
18 convincing evidence that Petitioner is a flight risk or danger to the community
19 before re-detaining him. *See e.g., Rodriguez Diaz v. Kaiser*, 2025 WL 3011852,
20 *11 (N.D. Ca. Sep. 16, 2025).

48. The government has no legitimate interest in detaining Petitioner without a hearing. *See e.g., Peters v. Wofford*, 2025 WL 2299801, *7 (E.D. Ca. Aug. 8, 2025) (finding that “the government’s asserted interest is hinged on mere speculation about [the noncitizen’s] risk of flight or dangerousness” given that noncitizen was complying with terms of his probation when detained); *Noori*, 2025 WL 2800149 at *11 (“Respondents did not provide Petitioner individualized notice and reasoning prior to his arrest and detention on June 12, 2025 and have presented no legitimate reason for why those decisions were made. Any governmental interest of efficient administration of immigration laws . . . does not outweigh these first two factors.”). Bond hearings are a routine part of immigration court proceedings, imposing a minimal cost to the government. *See Doe v. Becerra*, --- F.Supp.3d ----, 2025 WL 691664, *6 (E.D. Ca. March 3, 2025). Nothing in Petitioner’s record suggests that he would abscond or endanger the community before a bond hearing could be carried out. *See, e.g., Jorge M.F. v. Wilkinson*, 2021 WL 783561 *3 (N.D. Cal. Mar. 1, 2021); *Vargas v. Jennings*, 2020 WL 5074312, *3 (N.D. Cal. Aug. 23, 2020) (finding that “the government’s concern that delay in scheduling a hearing could exacerbate flight risk or danger is unsubstantiated in light of petitioner’s strong family ties and his continued employment during the pandemic as an essential agricultural worker”). In fact, Petitioner is represented by counsel and has a demonstrated record of attendance

1 when scheduled for hearings or immigration-related appointments. The
2 government has not sufficiently demonstrated the changed circumstances that
3 required his detention after being served a second NTA given that Petitioner had
4 been released on bond and out of custody for over two years and has had no
5 issues with law enforcement in that time. There is no reason to think that his
6 compliance will change if he is released pending a pre-deprivation custody
7 hearing.

8 **CLAIM THREE**
9 **Violation of the INA - 8 U.S.C. 1226(a)**

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

12 50. Petitioner is entitled to consideration for release on bond under 8 U.S.C.
13 § 1226(a). he was not “seeking admission” at the time of his redetention, so his
14 detention is governed by section 1226(a). *See, e.g., Arias Torres v. Bondi*, No.
15 25-cv-2457-BAS-MSB, 2025 WL 3214773 (S.D. Cal. Nov. 18, 2025); *Martinez*
16 *Lopez v. LaRose*, No. 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct.
17 302025); *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025 WL 3078837 (S.D. Cal.
18 Nov. 4, 2025); *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); *Esquivel-*
19 *Ipina v. LaRose*, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361 (S.D. Cal. Oct.
20 24, 2025); *Lucas-Miguel v. LaRose*, No. 25-cv-3022-RSH-JLB, 2025 WL
21 3251580 (S.D. Cal. Nov. 21, 2025); *Vasquez-Diaz v. LaRose*, No. 25-cv-3038-

TWR-JLB, ECF No. 6 (S.D. Cal. Nov. 13, 2025); *Cardoso v. LaRose*, No. 25-cv-3043-BJC-VET, ECF No. 7 (S.D. Cal. Dec. 12, 2025); *Maceda-Garcia v. Noem*, 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).

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

PRAYER FOR RELIEF

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

- 1) Assume jurisdiction over this matter;
- 2) Issue an order preventing Respondents from transferring Petitioner away from the Otay Mesa Detention Center, the closest detention center to counsel's office;
- 3) Issue an order to show cause and require a response within three days from Respondents as to why this petition should not be granted, pursuant to 28 U.S.C. § 2243;

- 1 4) Issue a writ of habeas corpus requiring Respondents to *immediately release*
2 Petitioner because he is re-detained in violation of his due process rights, or that
3 they must provide a bond hearing under 8 U.S.C. § 1226(a) and that the bond
4 hearing must be before a fair, neutral, open-minded arbiter, and if the bond hearing
5 is not fair and neutral, Petitioner be released immediately;
- 6 5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act
7 (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law;
8 and
- 9 6) Grant any other and further relief that this Court deems just and proper.

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11 Dated: April 9, 2026

Respectfully submitted,

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

14 **LIST OF EXHIBITS**

15 EXHIBIT A: Declaration of Tessa Cabrera

16 EXHIBIT B: Notices to Appear

17 EXHIBIT C: Order of Release on Recognizance

18 EXHIBIT D: Order of the Immigration Judge terminating proceedings
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