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Attorneys for Petitioner

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EDWIN MENDEZ REYES,

Petitioner,

v.

CHRISTOPHER LAROSE, Warden, Otay Mesa Detention Center; and SIDNEY AKI, Field Office Director, U.S. Immigration and Customs Enforcement, San Diego Field Office,

Respondents.

Case No. **'26CV3294 TWR GC**

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

INTRODUCTION

1. Petitioner is a citizen of Guatemala who entered the United States without inspection in or around 2015. On April 27, 2026, he was detained while driving to work. He was transferred multiple times and is currently detained at the Otay Mesa Detention Center. Prior to detention, Petitioner resided in Fort Lauderdale, Florida with his common law partner and two children and owned a landscaping business. Petitioner has no criminal history other than one minor traffic infraction. Despite Petitioner's presence in the United States, Respondents subject him to mandatory detention under 8 U.S.C. § 1225(b)(2) without an opportunity to

seek custody redetermination before an immigration judge ("IJ").

2. As this Court and many others have held, Petitioner's detention is unlawful under the Immigration and Nationality Act ("INA") because he is not an "applicant for admission" who is "seeking admission." 8 U.S.C. § 1225(b)(2)(A). Petitioner's arrest and detention also violate the Due Process Clause of the Fifth Amendment because Respondents arbitrarily deprived Petitioner of his liberty without notice or a hearing to determine whether his detention is justified.

3. Accordingly, Petitioner seeks a writ of habeas corpus ordering his immediate release from unlawful detention or, in the alternative, a prompt custody redetermination hearing under § 1226(a) and the implementing regulations, at which the government must demonstrate by clear and convincing evidence that he is a flight risk or danger to the community.

JURISDICTION & VENUE

4. This action arises under the U.S. Constitution and the INA, 8 U.S.C. § 1101 *et seq.*

5. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the U.S. Constitution (the Suspension Clause).

6. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

7. Venue is proper in the United States District Court for the Southern District of California, because Petitioner is currently in the physical custody of Respondents and detained at the Otay Mesa Detention Center in San Diego, California.

8. Venue is also proper under 28 U.S.C. § 1391(e) because Respondents are employees, officers, or agents of the United States and a substantial portion of

the events giving rise to this petition occurred within this District.

REQUIREMENTS OF 28 U.S.C. § 2243

9. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

PARTIES

10. Petitioner Edwin Mendez Reyes is a citizen of Guatemala who has been detained by immigration authorities and is currently held at the Otay Mesa Detention Center. Prior to detention he resided in Fort Lauderdale, Florida with his common law partner and two children and owned a landscaping business.

11. Respondent Christopher LaRose is Warden of the Otay Mesa Detention Center and oversees the facility where Petitioner is detained. Respondent LaRose has immediate physical custody of Petitioner and is sued in his official capacity.

12. Respondent Sidney Aki is the Field Office Director of the San Diego Field Office of U.S. Immigration and Customs Enforcement ("ICE"), Enforcement and Removal Operations. In this role, Respondent Aki is the legal custodian of Petitioner with authority to release him. She is sued in her official capacity.

FACTS

13. Petitioner is 49 years old and has resided in the United States since around 2015. Prior to his recent detention, he was residing in Fort Lauderdale, Florida.

14. Petitioner entered the United States without inspection and was apprehended at the southern border. Petitioner was released either on conditional parole under 8 U.S.C. § 1226(a) or humanitarian parole under § 1182(d)(5)(A). The Department of Homeland Security ("DHS") did not commence removal proceedings

at that time.

15. Petitioner has a pending asylum application that was filed in 2024 with the U.S. Citizenship and Immigration Services. Petitioner has valid employment authorization and a valid Florida driver's license.

16. Petitioner has no criminal record other than a minor traffic infraction for driving without a license in 2023. Instead, Petitioner is a contributing member of society who has his own landscaping business. He has resided in the Fort Lauderdale, Florida area since his initial entry to the United States. He has two U.S. citizen children.

17. On April 27, 2026, Customs and Border Patrol agents arrested Petitioner when he was on his way to work. Upon information and belief, Petitioner was arrested without a warrant and was not provided with a pre-deprivation hearing.

18. On or about May 4, 2026, DHS commenced removal proceedings against Petitioner. Petitioner is currently in standard removal proceedings before the Otay Mesa Immigration Court pursuant to 8 U.S.C. § 1229a. Upon information and belief, ICE has charged Petitioner with being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection. Petitioner has a preliminary hearing scheduled for June 4, 2026.

19. Petitioner continues to suffer unlawful, mandatory detention without any assertion that his detention is warranted or justified. He remains separated thousands of miles from his common law partner, his two children, and his community.

LEGAL FRAMEWORK

20. This case presents a pure legal question as to whether Petitioner's detention is properly governed by § 1225(b)(2)(A) or § 1226(a).

Statutory Authority for Immigration Detention

21. The INA prescribes three forms of detention for noncitizens.

22. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

23. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

24. Last, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

25. Until recently, "DHS has applied § 1226(a) and its discretionary release and review of detention to the vast majority of noncitizens allegedly in this country without valid documentation." *Salcedo Aceros v. Kaiser*, No. 25-CV-06924-EMC (EMC), 2025 WL 2637503, at *3 (N.D. Cal. Sept. 12, 2025).

26. On July 8, 2025, ICE announced a new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," and claimed that all individuals who entered the United States without inspection shall now be subject to mandatory detention under § 1225(b)(2)(A).

27. On September 5, 2025, the Board of Immigration Appeals ("BIA") adopted the same position in a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). There, the BIA held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for bond hearings before the immigration court.

Petitioner's Detention is Governed by § 1226(a)

28. Section 1226(a) creates a discretionary framework regarding the arrest

and detention of noncitizens upon a "warrant issued by the Attorney General." 8 U.S.C. § 1226(a). Under this framework, DHS "may continue to detain the arrested alien" or release them under bond or conditional parole. *Id.*

29. The text of § 1226 explicitly applies to individuals charged as being inadmissible, including those who entered without inspection. *See* 8 U.S.C. § 1226(c)(1)(E). Subparagraph (E)'s reference to such individuals makes clear that, by default, such individuals are afforded a bond hearing under subsection (a). As one district court explained, "[w]hen Congress creates 'specific exceptions' to a statute's applicability, it 'proves' that absent those exceptions, the statute generally applies." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1257 (W.D. Wash. 2025) (citing *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).

30. Since the government adopted its new policies, judges in the Southern District of California and throughout the country have rejected the government's novel interpretation of the INA's det

31. Since the government adopted its new policies, judges in the Southern District of California and throughout the country have rejected the government's novel interpretation of the INA's detention authorities and the BIA's reasoning in *Matter of Yajure Hurtado*, which adopts the same position as DHS. *See Velasquez v. LaRose*, No. 26-cv-3108-RFL-SBC, 2026 WL 1480806, at *1 (S.D. Cal. May 26, 2026) (Lin, J.) (government acknowledged that courts in this District have concluded that noncitizen subject to interior arrests are not subject to mandatory detention); *Hurtado-Anchico v. Warden* No.: 26cv2502-LL-DDL, 2026 WL 1422444 (S.D. Cal. May 20, 2026); *Cortez Garrido v. Mullin*, No.: 3:26-cv-02800-LEK-GC, 2026 WL 1375950 (S.D. Cal. May 15, 2026); *see also Mendes v. Hyde*, No. 25-CV-627-JJM-AEM, 2025 WL 3496546, at *1 (D.R.I. Dec. 5, 2025) (emphasizing that "at least 225 judges have ruled in more than 700 cases" rejecting DHS's interpretation of § 1225(b)(2)) (citation and internal quotations omitted).

32. Critically, courts have found that § 1226 also applies to someone, like Petitioner, who was released on humanitarian or conditional parole under § 1226 and recently detained while living in the United States in full compliance with the terms of his release. *See, e.g., Arias v. LaRose*, No. 3:25-cv-02595-BTM-MMP, 2025 WL 3295385, at *4 (S.D. Cal. Nov. 25, 2025) (Moskowitz, J.) (explaining that a noncitizen who was present in the U.S. for more than two years when their parole was revoked is not "seeking admission" and not subject to mandatory detention under § 1225(b)(2)); *Martinez v. LaRose*, 25-CV-3308 JLS (MSB), 2025 WL 3677938, at *21 (S.D. Cal. Dec. 18, 2025); *Salvador v. LaRose*, No. 26-cv-00553-BAS-MMP, 2026 WL 381607, at *2 (government acknowledged that a paroled noncitizen rearrested in the interior of the U.S. was detained under § 1226(a)); *Lopez v. Lyons*, Civil Action No. 1:25-cv-01838-AJT-IDD, 2025 U.S. Dist. LEXIS 232158, at *6 (E.D. Va. Nov. 25, 2025) (granting habeas where petitioner was paroled at border in 2016, lived in U.S. for nine years, and was re-arrested in the interior; holding § 1226(a) applies to "aliens already in the country" and § 1225(b) applies only to those "actively seeking admission").

33. While most courts agree that interpreting §§ 1226 and 1225 this way is consistent with the statutory framework, some decisions have adopted the minority view and agree with the government's interpretation, finding the term "applicant for admission" necessarily includes "seeking admission" regardless of length of presence in the United States, subjective intent, or whether apprehension occurred as part of the inspection and screening framework established in § 1225. *See, e.g., Alonzo v. Noem,* 809 F. Supp. 3d 1069 (E.D. Cal. 2025) (Shubb, J.); *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331, at *5 (S.D. Tex. Nov. 13, 2025) (collecting cases).

34. The Fifth and Eighth Circuits have recently issued opinions interpreting "applicant for admission" and "seeking admission" as coterminous and concluding

that noncitizens present in the United States without admission are properly subject to mandatory detention under § 1225(b)(2)(A). *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *4 (5th Cir. Feb. 6, 2026); *Avila v. Bondi*, No. 25-3248, 2026 WL 819258, at *3 (8th Cir. Mar. 25, 2026); *but see Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1061 (7th Cir. 2025) (indicating disagreement with the government's interpretation of § 1225).

35. The opinions from the Fifth and Eighth Circuits are not binding on this Court. The Sixth, Eleventh, and Second Circuits recently issued decisions agreeing with the majority interpretation. *See Lopez-Campos v. Raycraft*, No. 25-1965, --- F.4th ----, 2026 WL 1283891 (6th Cir. May 11, 2026); *Hernandez Alvarez v. Warden, Fed. Det. Ctr. Miami*, No. 25-14065, --- F.4th ----, 2026 WL 1243395 (11th Cir. May 6, 2026); *Barbosa da Cunha v. Freden*, No. 25-3141, --- F.4th ----, 2026 WL 1146044 (2d Cir. Apr. 28, 2026). The majority interpretation is persuasive for several reasons. *First*, it gives independent meaning to Congress's deliberate use of both "applicant for admission" and "seeking admission" in § 1225(b)(2)(A), rather than treating one phrase as surplusage in violation of fundamental canons of construction. *Lopez-Campos*, 2026 WL 1283891, at *4. *Second*, it aligns with the statutory definition of "admission" in § 1101(a)(13)(A) as "lawful entry . . . after inspection and authorization," reading "seeking admission" to refer to noncitizens actively pursuing this process at or near the border. *See id. Third*, it respects the Supreme Court's distinction in *Jennings v. Rodriguez,* 583 U.S. 281, 287 (2018) between § 1225(b), which applies to "aliens seeking admission into the country," and § 1226, which governs "aliens already in the country." *Id.* at *2. *Fourth*, it avoids rendering the recently enacted Laken Riley Act and other § 1226(c) provisions largely superfluous, as would result if all inadmissible noncitizens in the interior were already subject to mandatory detention under § 1225(b)(2)(A). *Id.*

Due Process Affords Protections to Immigration Detainees

36. The Supreme Court has made clear that the protections of the Due Process Clause extend to all persons within the United States, including noncitizens, regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025) (reiterating the well-established rule that noncitizens, even those without legal status, are entitled to due process of law requiring "notice and opportunity to be heard.")

37. The Supreme Court established in *Mathews v. Eldridge*, a balancing test to evaluate the adequacy of procedures used before deprivation of a liberty interest, which considers: (1) the private interest affected; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value of additional procedural safeguards; and (3) the government's interest, including the administrative burden that additional procedures would impose. 424 U.S. 319, 335 (1976).

38. Petitioner has resided in the United States since 2015, worked with authorization from DHS, and has no criminal history other than a minor traffic infraction. His private interest is profound as freedom from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Martinez v. LaRose*, No. 25-CV-3308 JLS (MSB), 2025 WL 3677938, at *2 (S.D. Cal. Dec. 18, 2025) (Sammartino, J.) (recognizing "a protectable liberty interest" in continued freedom).

39. The risk of erroneous deprivation is high because Respondents detained Petitioner without a hearing where they would be made to demonstrate that Petitioner's detention is justified. *Martinez*, 2025 WL 3677938, at *4 (finding risk of an erroneous deprivation high where petitioner has not received a hearing).

40. The government's interest in detaining Petitioner is low. Petitioner has no criminal history that could justify detention, and he is not subject to a final order of removal. Further, DHS's initial determination that Petitioner should be paroled

demonstrates that Petitioner was not found to be a danger to the community or flight risk, and circumstances have not changed to justify Petitioner's detention without adequate process. *Id.* (finding that "[o]nce a noncitizen has been released, the law prohibits federal agents from rearresting him merely because he is subject to removal proceedings." (quoting *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1760 (N.D. Cal. 2017)); *see also Zhunuev v. Aki*, 26-cv-01142-BAS-MMP, 2026 WL 673441, at *2 (S.D. Cal. Mar. 10, 2026) (Bashant, C.J.) ("[i]ndividuals released from custody, even where such release is conditional, have a liberty interest in continued liberty.") (citations omitted).

41. Due process requires that before subjecting Petitioner to arbitrary and indefinite detention, the government should establish that Petitioner poses a flight risk or danger such that his detention is justified. *See id.* Providing Petitioner with notice and a hearing before detaining him would impose only a minimal burden and cost on the government because DHS and immigration courts frequently perform these reviews for individuals in detention. *See* 8 C.F.R. § 1236.1(d)(1); *Jagroop S. v. Wofford,* No. 1:26-CV-00381-TLN-CKD, 2026 WL 276068, at *2 (E.D. Cal. Feb. 3, 2026) (Nunley, C.J.) (finding the cost and administrative burdens of additional safeguards minimal).

42. Accordingly, all three Mathews factors weigh decisively in Petitioner's favor.

Appropriate Relief

43. Petitioner is entitled to immediate relief. When courts find ongoing detention unlawful, "the typical remedy for such detention is, of course, release." *Munaf v. Geren*, 553 U.S. 674, 693 (2008). Ordering a bond hearing only prolongs Petitioner's continued detention, when the undisputed record contains no evidence that he is dangerous or a flight risk. *Kobilov v. O'Neill*, No. 26-cv-0058, 2026 WL 73475, at *3 (E.D. Pa. Jan. 8, 2026) (finding a bond hearing unnecessary where there

was no indication petitioner was a danger or flight risk).

44. Petitioner's detention independently violates his due process rights. Many courts have found that immediate release is also appropriate for detention in violation of constitutional rights. *See, e.g.*, *Moctezuma v. Henkey*, No. 1:25-CV-00741-BLW, 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (collecting cases); *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763, at *3 (N.D. Cal. July 4, 2025) (granting preliminary relief and ordering release to restore status quo existing prior to unlawful detention in violation of due process rights). A bond hearing is simply "no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Cruz-Reyes v. Bondi*, No. 5:26-CV-60, 2026 WL 332315, at *5 (S.D. Tex. Feb. 3, 2026).

45. If the Court is inclined to order a bond hearing, Petitioner respectfully requests that Respondents be made to bear the burden of demonstrating by clear and convincing evidence that Petitioner is a flight risk or danger to the community such that his continued detention is justified. Shifting the burden to the government "provides the appropriate level of procedural protection" and "strikes a fair balance between the rights of the individual and the legitimate concerns of the state." *Velasco Lopez v. Decker*, 978 F.3d 842, 856 (2d Cir. 2020) (citation omitted).

FIRST CLAIM FOR RELIEF

Unlawful Detention Under 8 U.S.C. § 1225(b)(2)(A)

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

47. Respondents assert that Petitioner is subject to mandatory detention under 8 U.S.C. §1225(b)(2) as an "applicant for admission." That classification is legally incorrect.

48. Section 1225 governs the inspection and detention of individuals who

are stopped at the border or at ports of entry and are seeking admission.

49. Petitioner has resided in the United States for over ten years and is not seeking admission. Thus, § 1225(b)(2)(A) does not apply to him.

50. As such, his detention is governed by § 1226(a). Section 1226(a) expressly provides for custody redetermination hearings and release on bond.

51. Respondents' classification of Petitioner under §1225(b)(2) is therefore contrary to the statutory framework established by Congress and constitutes unlawful detention. Accordingly, Petitioner is entitled to immediate release or a custody redetermination hearing in the alternative.

SECOND CLAIM FOR RELIEF

Violation of the Fifth Amendment Due Process Clause

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

53. Petitioner is currently detained by Respondents in civil immigration detention. Civil detention is subject to the constraints of the Fifth Amendment Due Process Clause. The Supreme Court has long recognized that civil detention must bear a reasonable relation to its purpose and must include meaningful procedural safeguards.

54. Petitioner has been denied any meaningful opportunity to challenge his detention. The *Mathews* factors establish that Petitioner should have received notice and a hearing to determine whether his detention is justified.

55. Respondents' detention of Petitioner under these circumstances violates Petitioner's procedural due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Order that Petitioner shall not be transferred outside the Southern District

of California while this matter is pending;

c. Order Respondents to show cause within 3 days why this petition should not be granted;

d. Issue a Writ of Habeas Corpus ordering Respondents to immediately release Petitioner from immigration detention along with all his possessions;

e. If release is granted, direct Respondents to promptly transport Petitioner back to Fort Lauderdale, Florida at the government's expense;

f. Declare that Petitioner's detention is unlawful under 8 U.S.C. § 1225(b)(2), the INA, and/or the Due Process Clause of the Fifth Amendment;

g. In the alternative, order Respondents to provide Petitioner with a custody redetermination hearing under 8 U.S.C. § 1226(a) and its implementing regulations at which the government must bear the burden of establishing by clear and convincing evidence before an IJ that Petitioner is a flight risk or a danger to the community and where the IJ must consider conditions of release sufficient to mitigate any flight risk; and

h. Grant any further relief that this Court deems just and proper.

Date: May 29, 2026

Respectfully submitted,

/s/ Alexa S. White

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(Pro hac vice application forthcoming)

Attorneys for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner Edwin Mendez Reyes and submit this verification on his behalf. I verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus and the documents submitted in support thereof are true and correct to the best of my knowledge.

Date: May 29, 2026

/s/ Alexander Martinez
Alexander Martinez
alex@martinezvisas.com