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UNITED STATES DISTRICT COURT

Southern District of California

RUTILO LUCAS HERNANDEZ, Petitioner, v. CHRISTOPHER J. LaROSE, Senior Warden Otay Mesa Detention Center; TODD BLANCHE, Acting United States Attorney General; MARKWAYNE MULLIN, Secretary of the Department of Homeland Security; PATRICK DIVVER, ICE San Diego Field Office Director, in their official capacities, Respondents.	Case Number: '26CV3959 BJC JLB **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS** Oral Argument Requested

Petitioner alleges:

INTRODUCTION

1. Petitioner RUTILO LUCAS HERNANDEZ (aka Pedro Garcia Ramirez) [redacted] [redacted] is subjected to unlawful detention by Respondents at the Otay Mesa Detention Center. Respondents detained Petitioner without any explanation. The immigration judges at Otay Mesa conclude there is no jurisdiction to even consider setting a bond based on the case *Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025). Petitioner seeks an order compelling his immediate release from custody or for the immigration judge to accept jurisdiction and afford him a bond decision pursuant to 8 U.S.C. § 1226(a).

JURISDICTION

2. This action arises under the Constitution of the United States; the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq*; and the Administrative Procedures Act ("APA"), 5 U.S.C. § 500, *et seq*.

3. This court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 5 U.S.C. § 701 et seq. (APA); and 28 U.S.C. §§ 2201-2202 (Declaratory Judgment Act).

4. The court may grant relief under the habeas corpus statutes, the Declaratory Judgment Act, and the All-Writs Act, 28 U.S.C. § 1651.

VENUE

5. Venue is proper because Petitioner is detained at the Otay Mesa Detention Facility, in San Diego, California, which is within the jurisdiction of this District.

6. Venue is also proper in this judicial district pursuant to 28 USC §1391(e) because at least one federal respondent is in this District; and a substantial part of the events or omissions giving rise to the claims in this action took place in this District. No real property is involved.

REQUIREMENTS OF 28 U.S.C. § 2243

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

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

PARTIES

9. Petitioner RUTILO LUCAS HERNANDEZ ("Petitioner") is a citizen of Guatemala. He is detained by the Respondents at the Otay Mesa Detention Center.

10. Respondent CHRISTOPHER J. LaROSE is sued in his official capacity as the Senior Warden of the (Otay Mesa Detention Center). Defendant LaRose has custody of petitioner.

11. Respondent TODD BLANCHE is being sued in his official capacity as the Acting Attorney General of the United States. He is the official generally charged with supervisory authority over all operations of the Department of Justice. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103 and oversees the Executive Office for Immigration Review ("EOIR"), a component of the DOJ, which includes the immigration courts and the Board of Immigration Appeals ("BIA" or "Board"). He is empowered to oversee the adjudication of removal and bond hearings and by regulation has delegated that power to the nation's Immigration Judges and the BIA.

12. Respondent MARKWAYNE MULLIN is being sued in his official capacity as the Secretary of the United States Department of Homeland Security. He is the executive officer who has been given authority to manage and control U.S. Immigration and Customs Enforcement ("ICE"). As such, he is the ultimate legal custodian of petitioner.

13. Respondent PATRICK DIVVER is being sued in his official capacity as the Field Office Director for the San Diego Field Office of Immigration and Customs Enforcement (ICE), a component of DHS with responsibility over persons in immigration custody at the Otay Mesa Detention Center. Director Divver has custody of petitioner.

LEGAL FRAMEWORK

14. This petition presents the legal questions of whether an alien with long term residence in the United States is subject to detention pursuant to 8 U.S.C. § 1226 or 8 U.S.C. § 1225, as well as the remedy for the unlawful detention.

15. As a threshold matter, the United States Supreme Court has re-affirmed that aliens are entitled to due process of law in deportation proceedings and must be given notice and an opportunity to be heard commensurate with the nature of the case. *Trump v. J. G. G.*, 604 U.S. ___, 145 S. Ct. 1003, 1006 (2025).

1226 vs. 1225

16. The "usual removal process" involves an evidentiary hearing before an immigration

judge. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 108 (2020). Proceedings are initiated under 8 U.S.C. § 1229(a), also known as "full removal," by filing a Notice to Appear with the Immigration Court. *Matter of E-R-M- & L-R-M-*, 25 I. & N. Dec. 520, 520 (BIA 2011). Section § 1226 provides that while removal proceedings are pending, a noncitizen "may be arrested and detained" and that the government "may release the alien on ... conditional parole." § 1226(a)(2); *accord Thuraissigiam*, 591 U.S. at 108 (during removal proceedings, applicant may either be "detained" or "allowed to reside in this country").

17. When a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination. *Diaz v. Garland*, 53 F.4th 1189, 1196 (9th Cir. 2022) (citing 8 C.F.R. § 236.1(c)(8)). A noncitizen will be released if he or she "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding." *Id.* (citing 8 C.F.R. § 236.1(c)(8)). "Federal regulations provide that aliens detained under § 1226(a) receive bond hearings at the outset of detention." *Jennings v. Rodriguez*, 583 U.S. 281, 306 (2018) (citing 8 CFR §§ 236.1(d)(1)). If, at this hearing, the detainee demonstrates by the preponderance of the evidence that he or she is not "a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk," the IJ will order his or her release. *Diaz*, 53 F.4th at 1197 (citing *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (B.I.A. 2006)).

18. While "§ 1226 applies to *aliens already present in the United States*," U.S. immigration law also "authorizes the Government to detain certain *aliens seeking admission into the country* under §§ 1225(b)(1) and (b)(2)," a process that provides for expedited removal. *Jennings*, 583 U.S. at 303 (2018) (emphasis added). Under § 1225, a noncitizen "who has not been admitted or who arrives in the United States" is considered "an applicant for admission." 8 U.S.C. § 1225(a)(1). For certain applicants for admission, 8 U.S.C. § 1225 authorizes "expedited removal." § 1225(b)(1).

19. In July 2025, the current administration in Washington decided to try and change the detention rules that have been applied for decades in immigration court. Ignoring the plain meaning of the statutes as well as the decades of legal precedent, respondents began to say that the expedited

removal mandatory detention rules apply to *all* noncitizens who entered the United States unlawfully. Respondents' central argument is that petitioner is subject to mandatory detention pending removal proceedings under 8 U.S.C. § 1225(a)(1), 1225(b)(2)(A). Respondents rely on the BIA's recent decision in *Yajure Hurtado,* 29 I & N Dec. 216 (BIA 2025), which affirmed the government's new interpretation of § 1225.

20. As a threshold matter, the BIA decision *Yajure Hurtado* is entitled to little or no deference by the District Court. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (observing that while "agencies have no special competence in resolving statutory ambiguities," "[c]ourts do").

21. Multiple District Courts across the entire United States have concluded that the government's proposed interpretation of the statute (a) disregards the plain meaning of section 1225(b)(2)(A); (b) disregards the relationship between sections 1225 and 1226; (c) would render a recent amendment to section 1226(c) superfluous; and (d) is inconsistent with decades of prior statutory interpretation and practice. The following quote is a representative example:

> "The Court follows other decisions in this Circuit finding that "seeking admission requires an affirmative act such as entering the United States or applying for status, and that it does not apply to individuals who, like [Petitioner], have been residing in the United States and did not apply for admission or a change of status." *Mosqueda v. Noem*, No. 25-CV-2304 CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025); *see, e.g., Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Rodriguez*, 2025 WL 2782499, at *1 ("Every district court to address this question has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice."); *Guzman v. Andrews*, No. 25-CV-1015-KES-SKO (HC), 2025 WL 2617256, at *4–5 (E.D. Cal. Sept. 9, 2025) (finding that petitioner who was released on bond and rearrested was entitled to a bond hearing under § 1226); *Garcia*, 2025 WL 2549431, at *8 (providing petitioner with an individualized bond hearing under § 1226(a)); *Valdovinos v. Noem*, No. 25-

CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025) (same)." *Esquivel-Pina v. LaRose*, No. 25-CV-2672, 2025 WL 2998361 at 8 (S.D. Cal. Oct. 24, 2025).

22. For some reason, the litigation of this issue still continues across the nation. In late November 2025, another District Court judge included a survey of cases that reached the same conclusion: "This is not the first time the administration's change of heart has been challenged in court. By a recent count, the central issue in this case – the administration's new position that *all* noncitizens who came into the United States illegally, but since have been living in the United States, *must be detained* until their removal proceedings are completed – has been challenged in at least 362 cases in federal district courts. The challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States. Thus, the overwhelming, lopsided majority have held that the law still means what it always has meant." *Barco Mercado v. Francis*, No. 25-cv-1234, 25 WL 3295903 (S.D. New York November 26, 2025). (footnotes 22 and 23 omitted but attached to this petition as Appendix A and Appendix B). The judge clarified that none of these citations were binding precedent on the court, as each judge must make an independent assessment of whether the 1225 or 1226 rules apply to the individual petitioner.

Remedy

23. Further, some District Courts have found that immediate release, rather than a bond hearing, is the appropriate remedy. *See E.A. T.-B. v. Wamsley*, 795 F. Supp. 3d 1316, 1324 (W.D. Wash. 2025) ("Although the Government notes that Petitioner may request a bond hearing while detained, such a post-deprivation hearing cannot serve as an adequate procedural safeguard because it is after the fact and cannot prevent an erroneous deprivation of liberty.");*Jorge M.F. v. Jennings*, 534 F. Supp. 3d 1050, 1055 (N.D. Cal. 2021) ("if Petitioner is detained, he will already have suffered the injury he is now seeking to avoid"); *Domingo v. Kaiser*, Case No. 25-cv-05893 (RFL), 2025 WL 1940179, at *3 (N.D. Cal. July 14, 2025) ("Even if Petitioner[ ] received a prompt post-detention bond hearing under 8 U.S.C. § 1226(a) and was released at that point, he will have already

suffered the harm that is the subject of his motion; that is, his potentially erroneous detention.").

Warrantless Detention

24. A noncitizen may only be arrested and detained pending a decision on removal "[o]n a warrant issued by the Attorney General." 8 U.S.C. § 1226(a). In other words, the "[i]ssuance of a warrant is a necessary condition to justify discretionary detention under section 1226(a)." *J.A.C.P. v. Wofford*, No. 1:25-CV-01354-KES-SKO (HC), 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025) (quoting *Chogllo Chafla v. Scott*, 804 F. Supp. 3d 247, 264 (D. Me. 2025)). When the government does "not comply with the plain language of section 1226(a), [a petitioner's] immediate release is justified." *Chogllo Chafla*, 804 F. Supp. 3d at 264; *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("Habeas is at its core a remedy for unlawful executive detention. The typical remedy for such detention is, of course, release." (internal citation omitted)). If a noncitizen's arrest and detention are unauthorized then the appropriate remedy for unlawful detention is release. *See e.g., Mayen v. Warden, California City Det. Ctr.*, No. 1:26-CV-02354-DAD-AC, 2026 WL 1158217, at *2 (E.D. Cal. Apr. 29, 2026) (ordering petitioner's immediate release where there was no evidence that the government issued a warrant for petitioner's arrest when he was detained); *Ahmed M. v. Bondi*, No. 25-CV-4711 (ECT/SGE), 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026) (holding that "[r]elease is an available and appropriate remedy for detention that lacks a lawful predicate."); *J.A.C.P.*, No. 1:25-CV-01354-KES-SKO (HC), 2025 WL 3013328, at *8 ("Since the Government did not comply with the plain language of section 1226(a), petitioner's immediate release is justified.").

FACTUAL ALLEGATIONS

25. Petitioner RUTILO LUCAS HERNANDEZ is a citizen of Guatemala. He is married. Petitioner has two children, ages 8 and 6. The children are United States citizens. Petitioner has been regularly employed. He works in landscaping. He has no criminal record.

26. Petitioner last entered the United States in 2008 by crossing unlawfully at the border. He was not apprehended upon his arrival to the United States. Petitioner came to the safety of the USA fleeing crime and violence in Guatemala. Prior to this he was apprehended and sent to Mexico a couple of times: in 2006 and 2006. He gave the fake name Pedro Garcia Ramirez because he did

not want to be returned to Guatemala. He was afraid of being killed in Guatemala.

27. On June 30, 2026, Petitioner was going to work. ICE agents stopped and detained him. It is unclear if the ICE agents had an arrest warrant. The DHS sent Petitioner to the Otay Mesa Detention Center, where he remains today. His detention at the immigration jail is causing him and his family emotional harm and financial distress.

28. The DHS started a removal case against Petitioner by filing a Notice to Appear at the Otay Mesa Immigration Court. The removal proceeding is under the fake name Pedro Garcia Ramirez. The removal case is pending. Petitioner qualifies to apply for cancellation of removal; asylum, withholding, and CAT.

29. Petitioner has not requested custody redetermination at the Otay Mesa Immigration Court because this is futile. The immigration judges will deny bond, concluding there is no jurisdiction to even consider setting a bond based on the case *Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025). Moreover, the Ninth Circuit Court of Appeals has stayed the decision in *Maldonado-Bautista*.

CAUSES OF ACTION

COUNT 1

(Violation of the Immigration and Nationality Act)

30. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 29.

31. The DHS detains petitioner pursuant to 8 U.S.C. § 1226, not 8 U.S.C. § 1225; therefore he is entitled to a bond redetermination hearing before an immigration judge.

32. Petitioner's continued detention under Section 1226(a) in the absence of a bond hearing and decision on the merits violates the INA.

COUNT 2

(Violation of the Due Process Clause)

33. Petitioner incorporates by reference the allegations set forth in paragraphs 1 to 32.

34. On or about June 30, 2026, DHS agents unlawfully detained Petitioner apparently without a warrant. Petitioner was then transferred to the Otay Mesa Detention Center.

35. The detention of petitioner without a warrant or reasonable suspicion violates Ninth

Circuit case law and the Due Process Clause of the Fifth Amendment to the United States Constitution.

36. The continued detention of petitioner without the opportunity to apply for a bond on the merits violates Ninth Circuit case law and the Due Process Clause of the Fifth Amendment to the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court to grant the following:

(1) Assume jurisdiction over this matter;

(2) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

(3) Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment, the INA, and the APA;

(4) Issue a Writ of Habeas Corpus ordering Respondents to either (a) release Petitioner immediately or (b) schedule a bond hearing pursuant to 8 U.S.C. § 1226(a);

(5) Issue an order prohibiting respondents from re-detaining petitioner without a material change in circumstances and a pre-deprivation hearing where respondents must prove by clear and convincing evidence that petitioner is either a flight risk or danger to the community;

(6) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (28 U.S.C. § 2412), and any other applicable statute or regulation; and

(7) Grant any further relief this Court deems just and proper.

DATED: 09 July 2026

Respectfully submitted,

/s/ *William Baker*

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VERIFICATION

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury under the laws of the United States that I am the petitioner; I have read the petition or had it read to me in a language I understand, and the information in the petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

VERIFICACIÓN

DECLARACIÓN BAJO PENA DE PERJURIO

Declaro bajo pena de perjuro, conforme a las leyes de los Estados Unidos, que soy el peticionario; que he leído la petición o que se me ha leído en un idioma que comprendo, y que la información contenida en la petición es veraz y correcta. Comprendo que una declaración falsa sobre un hecho esencial puede servir de fundamento para un procesamiento por perjuro.

Rutilo Lucas Hernandez
Petitioner