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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO

Octavio BELLO PEREZ,
Petitioner,

v.

Todd Blanche, Acting Attorney General of the United States, Department of Justice;

Markwayne Mullin, Secretary of Homeland Security;

David J. Venturella, Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement;

Patrick Divver, Field Office Director of the San Diego Immigration and Customs Enforcement Office;

Jorge Velarde, Assistant Field Office Director of the Immigration and Customs Enforcement, Otay Mesa Detention Center;

Christopher J. LaRose; Senior Warden, Otay Mesa Detention Center;

Respondents.

Case No. '26CV4021 RFL JLB

Agency No. [redacted]

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY UNDER 28 U.S.C. § 2241 AND ORDER TO SHOW CAUSE

INTRODUCTION

1. Petitioner, Octavio Bello Perez (A [redacted] (hereinafter "Petitioner" or "Mr. Bello"), a 45-year-old Mexican national, has been detained in immigration custody, in violation of his due process rights, since approximately June 18, 2026, at the Otay Mesa Detention Center. Ex. A, Notice to Appear ("NTA").

2. Mr. Bello first entered the United States in approximately 1999 without inspection or admission near Phoenix, AZ. Mr. Bello's last entry to the United States was in approximately 2009, without inspection, admission, or parole. *Id.* He has remained living in the United States since without departure. His minimal criminal history nor any aggravating circumstance should prevent his eligibility for an immigration judge to conduct a bond hearing, according to the Immigration and Nationality Act ("INA").

3. Therefore, Petitioner files this petition. Petitioner asks this Court to find that his continued detention is unlawful without an opportunity for a bond hearing given Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a); that he may not be transferred during the pendency of this petition; and that this court make an order to show cause. Petitioner requests 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 and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

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

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

7. The provisions in 8 U.S.C. §§ 1252(g) and 1252(b)(9) do not strip this Court of jurisdiction. Petitioner is not contesting the commencement or adjudication of removal proceedings against him, nor is he raising an issue with respect to the execution of removal. Petitioner does challenge his classification under Section 1225(b)(2) instead of Section 1226(a) and the Board of Immigration Appeals' ("BIA") decision that immigration judges lack authority to provide a bond hearing on that basis. The petition is independent of the removal proceedings and all questions related to the commencement of removal proceedings or any part of the removal process. "[C]laims that are independent of or collateral to the removal process do not fall within the scope of § 1252(b)(9)." *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016). Additionally, Section 1252(g) "does not prohibit challenges to unlawful practices merely because they are in some fashion

connected to removal orders." *Ibarra-Perez v. United States*, 154 F.4th 989, 997 (9th Cir. 2025). Thus, this Court is not stripped of jurisdiction by Sections 1252(g) and 1252(b)(9).

VENUE

8. Venue is proper because Petitioner is detained and currently resides at the Otay Mesa Detention Center in the County of San Diego, which is within the jurisdiction of this District and no real property is involved in this action. 28 U.S.C. § 1391(e).

REQUIREMENTS OF 28 U.S.C. § 2243

9. The Court must grant the petition for writ of habeas corpus 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.* (emphasis added).

10. 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

Petitioner

11. Petitioner, Mr. Bello, is a Mexican national who is in custody at the Otay Mesa Detention Center located at 7488 Calzada De La Fuente, San Diego, CA 92154. He is in the custody, and under the direct control, of Respondents and their agents.

Respondents

12. Respondent Todd Blanche, Acting U.S. Attorney General, is sued in their official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice ("DOJ"). In that capacity, they have the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review ("EOIR"), which administers the immigration courts and the Board of Immigration Appeals. Respondent U.S. Attorney General is a legal custodian of Petitioner.

13. Respondent Markwayne Mullin Secretary of U.S. Department of Homeland Security ("DHS") is sued in their official capacity as the Secretary of the DHS. In this capacity, Respondent Secretary is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees U.S. Immigration and Customs Enforcement, the component agency responsible for Petitioner's detention and custody. Respondent Secretary is a legal custodian of Petitioner.

14. Respondent David J. Venturella is sued in his official capacity as the Senior Official Performing the Duties of the Director ICE. Respondent Venturella is the legal custodian of Petitioner.

15. Respondent Patrick Divver is sued in his official capacity as the Field Office Director of the San Diego ICE Office. Respondent Divver is a legal custodian of Petitioner and has authority to release him.

16. Respondent Jorge Velarde is sued in his official capacity as Assistant Field Office Director of the ICE at the Otay Mesa Detention Center. Respondent Velarde is a legal custodian of Petitioner and has direct authority to release him.

17. Respondent Christopher J. LaRose is sued in his official capacity as the Senior Warden, Otay Mesa Detention Center. Respondent LaRose is the direct physical custodian of Petitioner and has direct authority to release him.

STATEMENT OF FACTS

18. Petitioner, Mr. Bello, a 45-year-old Mexican national, has lived in the United States continuously since his last entry without inspection or admission in approximately 2009. Ex. A.

19. On June 18, 2026, while Mr. Bello was driving to work, he was stopped at a stoplight when an unmarked SUV pulled in front of him and started going in reverse towards his vehicle. At the same time he noticed an SUV behind him with its lights on. Men got of the SUV's and started yelling his name. They opened his

door and pulled him out of the vehicle and said he was being arrested for being in the country illegally. He was detained and DHS placed Mr. Bello in removal proceedings pursuant to 8 U.S.C. § 1229a by serving him a NTA dated June 18, 2026. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection and is present without admission. Ex. A.

20. While Respondents will argue Petitioner is detained under 8 U.S.C. § 1225(b)(2), Petitioner is detained pursuant to 8 U.S.C. § 1226(a), which governs the detention of noncitizens "inside the United States" and "present in the country." *Jennings v. Rodriguez*, 583 U.S. 281, 288–89 (2018).

21. Section 1225(b)(2), in contrast, authorizes the detention of applicants for admission who are "seeking admission" but "not clearly and beyond a doubt entitled to be admitted." Unlike section 1226(a), section 1225(b)(2) provides that individuals who fall under its authority "shall be detained" during the pendency of proceedings, though they too remain eligible for release through the parole process. *Jennings*, 583 U.S. at 300 (holding that release on "parole" under 8 U.S.C. 1182(d)(5)(A) remains available even for people held under otherwise-mandatory detention pursuant to section 1225(b)). Courts in this district have repeatedly reached the same conclusion. *See, e.g.*, *Arias Torres v. Bondi*, No. 25-cv-2457-BAS-MSB, 2025 WL 3214773 (S.D. Cal. Nov. 18, 2025); *Martinez*

Lopez v. LaRose, No. 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct. 302025); *Beltran v. Noem*, No. 25cv2650-LL-DEB, 2025 WL 3078837 (S.D. Cal. Nov. 4, 2025); *Garcia v. Noem*, 803 F. Supp. 3d 1064 (S.D. Cal. 2025); *Esquivel-Ipina v. LaRose*, No. 25-CV-2672 JLS (BLM), 2025 WL 2998361 (S.D. Cal. Oct. 24, 2025); *Lucas-Miguel v. LaRose*, No. 25-cv-3022-RSH-JLB, 2025 WL 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, 225); *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).

22. Petitioner was unquestionably detained in the interior of the country prior to the issuance of the NTA. Ex. A.

23. Therefore, Mr. Bello requests this court issue a habeas order requiring a lawful bond hearing before a fair, neutral, and open-minded arbiter be held for him so that his unlawful detention does not continue.

CLAIM FOR RELIEF
Violation of the INA

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

25. Mr. Bello's eligibility for bond under 8 U.S.C. § 1226(a) remains. A multitude of cases have concluded that 8 U.S.C. § 1226(a) is the appropriate standard for bond in Petitioner's circumstance and that applying Section 1225 "(1) disregards the plain meaning of section 1225(b)(2)(A); (2) disregards the relationship between sections 1225 and 1226; (3) would render a recent amendment to section 1226(c) superfluous; and (4) is inconsistent with decades of prior statutory interpretation and practice." *Lepe v. Andrews*, 801 F. Supp. 3d 1104, 1112 (E.D. Cal. 2025) (citing cases).

26. 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.

27. Thus, Respondents must provide access to a bond hearing before a fair, neutral, and open-minded arbiter.

PRAYER FOR RELIEF

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

a. Assume jurisdiction over this matter;

b. Issue an order preventing Respondents from transferring Petitioner away from the Otay Mesa Detention Center;

c. 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, or alternatively to follow CJO 144;

d. Issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) and that the bond hearing must be before a fair, neutral, open-minded arbiter, and if the bond hearing is not fair and neutral, Petitioner be released immediately;

e. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

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

Respectfully submitted,

Dated: July 13, 2026

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

LIST OF EXHIBITS

EXHIBIT A: Notice to Appear

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

I represent Petitioner, Octavio Bello Perez, and submit this verification on his behalf. I hereby verify under penalty of perjury under the laws of the United States and the State of California that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 13th day of July, 2026.

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