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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Amner Joram Escalante Gomez,

Petitioner,

v.

Todd Blanche, Acting Attorney General of the United States;

Markwayne Mullin, Secretary, U.S. Department of Homeland Security;

David Venturella, Acting Director, U.S. Immigration and Customs Enforcement;

Gregory J. Archambeault, Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement; and

Christopher J. Larose, Warden, Otay Mesa Detention Center, in their official capacities,

Respondents.

Case No.: **'26CV4124 RBM DDL**

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

IMMIGRATION DETENTION - NO INDIVIDUALIZED BOND HEARING

INTRODUCTION

1. Petitioner Amner Joram Escalante Gomez ("Petitioner" or "Mr. Escalante Gomez") is a nineteen-year resident of the United States, the father of four U.S. citizen children, the son of a lawful permanent resident mother, the brother of a lawful permanent resident sibling, and a person with no criminal history. He brings this Petition under 28 U.S.C. § 2241 seeking an order requiring Respondents to immediately release Petitioner from unlawful immigration detention, or, in the alternative, to provide a prompt individualized custody hearing before a neutral decision maker at which the government bears the burden of proving that Petitioner's continued detention is lawful, necessary, and constitutionally permissible.

2. In *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 225–28 (BIA 2025), the Board of Immigration Appeals held that immigration judges lack authority to hear bond requests from noncitizens who are present in the United States without admission because they are detained under 8 U.S.C. § 1225(b)(2)(A). The Government applies that rule without regard to how long ago the person entered or where the person is later arrested.

3. A certified nationwide class challenged that interpretation in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal.). The district court held that class members who entered without inspection, were not apprehended upon arrival, and are not otherwise subject to mandatory detention must be processed under 8 U.S.C. § 1226(a), and it later vacated *Matter of Yajure Hurtado*. See Maldonado Bautista, 813 F. Supp. 3d 1084, 1127 (C.D. Cal. 2025); 2026 WL 468284, at *10–12 (C.D. Cal. Feb. 18, 2026). On March 31, 2026, the Ninth Circuit stayed those orders outside the Central District of California pending appeal. *Bautista v. U.S. Department of Homeland Security*, No. 26-1044, ECF No. 17 (9th Cir. Mar. 31, 2026). U.S. Immigration and Customs Enforcement ("ICE") is detaining Petitioner at the Otay Mesa Detention Center in the Southern District and therefore cannot presently invoke the class judgment as an independently operative source of relief.

4. Petitioner instead asks this Court to exercise its independent habeas jurisdiction to decide the statutory question for itself and, alternatively, to hold that the complete denial of any neutral custody hearing violates the Fifth Amendment as applied to him. Although DHS may possess discretionary

parole authority, that unilateral administrative mechanism is not a bond hearing before a neutral decisionmaker and does not cure the absence of individualized custody review.

JURISDICTION

5. This Court has subject-matter jurisdiction under 28 U.S.C. § 2241(c)(3), which authorizes habeas relief when a person is "in custody in violation of the Constitution or laws or treaties of the United States," and under 28 U.S.C. § 1331. Habeas is available to persons detained within the United States, *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004), and its traditional function is to secure release from unlawful custody, *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). See also *INS v. St. Cyr*, 533 U.S. 289, 314 (2001). The All Writs Act, 28 U.S.C. § 1651, is not asserted as an independent grant of jurisdiction.

6. Section 1252 does not channel this detention-only challenge into a petition for review because Petitioner does not attack a removal order or the merits of removal proceedings. See *Lopez-Marroquin v. Barr*, 955 F.3d 759, 759 (9th Cir. 2020); *Singh v. Holder*, 638 F.3d 1196, 1211–12 (9th Cir. 2011). Section 1252(b)(9) does not sweep in claims challenging detention itself, *Jennings v. Rodriguez*, 583 U.S. 281, 293–95 (2018), and § 1252(g) is limited to the three discrete actions identified in its text, *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999).

7. Nor does 8 U.S.C. § 1226(e) bar review of the legal framework governing custody. That provision forecloses review of discretionary detention judgments, but not constitutional claims or questions of law. *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); Singh, 638 F.3d at 1202. *Martinez v. Clark* holds that applying a governing legal standard to established facts may present a reviewable mixed question, while the reviewing court may not simply reweigh discretionary evidence. 124 F.4th 775, 782–84 (9th Cir. 2024) (applying *Wilkinson v. Garland*, 601 U.S. 209 (2024)). Whether § 1225(b)(2)(A) or § 1226(a) supplies the statutory authority for Petitioner's custody is a threshold legal question, not a request to second-guess a discretionary bond amount or evidentiary weighing.

VENUE AND RESPONDENT

8. A habeas petition challenging present physical confinement ordinarily must be filed in the district of confinement and name the immediate custodian. *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 447 (2004). Petitioner is confined at the Otay Mesa Detention Center, 7488 Calzada de la Fuente, San

Diego, California 92154, within this District. Venue is proper, and Respondent Christopher J. LaRose, alleged to be the facility's Warden and Petitioner's immediate custodian, is properly named.

REQUIREMENTS OF 28 U.S.C. § 2243

9. Section 2243 directs the Court to award the writ or order Respondents to show cause "forthwith," unless the application shows that Petitioner is not entitled to relief, and generally directs a return within three days unless additional time, not exceeding twenty days, is allowed for good cause. Petitioner is separated from his four U.S. citizen children, and each additional day of detention causes irreparable harm, including loss of liberty and ongoing emotional distress, without any neutral custody review. Petitioner therefore respectfully requests expedited consideration consistent with the statute and the Court's rules.

PARTIES

10. Petitioner Amner Joram Escalante Gomez is a native and citizen of Guatemala, A# [redacted] currently detained at the Otay Mesa Detention Center.

11. Respondent Todd Blanche is alleged to be the Acting Attorney General of the United States and is sued in his official capacity.

12. Respondent Markwayne Mullin is alleged to be the Secretary of the U.S. Department of Homeland Security and is sued in his official capacity.

13. Respondent David Venturella is alleged to be the Acting Director of ICE and is sued in his official capacity.

14. Respondent Gregory J. Archambeault is alleged to be the ICE Enforcement and Removal Operations Field Office Director for the San Diego Field Office and is sued in his official capacity.

15. Respondent Christopher J. LaRose is alleged to be the Warden of the Otay Mesa Detention Center and is sued in his official capacity as Petitioner's immediate custodian.

STATEMENT OF FACTS

A. Petitioner's Entry, Family, and Community Ties

16. Petitioner is a native and citizen of Guatemala who entered the United States without inspection on or about September 27, 2007.

17. Since that entry, Petitioner has resided continuously in Palm Beach County, Florida, for approximately nineteen years.

18. Petitioner is the father of four United States citizen children. His eldest child turns eighteen on [redacted] and his youngest child turns five on [redacted]

19. Petitioner's mother is a lawful permanent resident, as is Petitioner's brother.

20. Petitioner has strong community ties in West Palm Beach, including stable employment at GSAV, Inc. since September 5, 2025.

21. Petitioner has no criminal convictions and, before the events described below, no arrest history.

B. The July 8, 2026 Encounter and ICE Custody

22. On July 8, 2026, Florida Highway Patrol officers stopped Petitioner while he was dropping his son off at summer school. No citation or charging document was issued in connection with the stop. Petitioner was thereafter transferred to ICE custody. The circumstances of the stop are set forth solely as background context for the detention at issue.

23. Petitioner was initially held at the Krome North Service Processing Center in Miami-Dade County, Florida.

C. Transfer to Otay Mesa and the No-Bond Classification

24. Between approximately July 13 and July 14, 2026, ICE transferred Petitioner from Krome North Service Processing Center to the Otay Mesa Detention Center, where he remains detained.

25. On information and belief, DHS treats Petitioner as mandatorily detained under 8 U.S.C. § 1225(b)(2)(A), consistent with *Matter of Yajure Hurtado*.

26. The Central District of California certified a "Bond Eligible Class" consisting of noncitizens without lawful status who entered without inspection, were not apprehended upon arrival, and were not otherwise subject to detention under §§ 1226(c), 1225(b)(1), or 1231 when DHS made its initial custody determination. Maldonado Bautista, 813 F. Supp. 3d at 1127. The district court later enforced its judgment and vacated *Matter of Yajure Hurtado*. 2026 WL 468284, at *10–12. Petitioner appears to satisfy that class definition, subject to verification of the charging and custody documents.

27. On March 31, 2026, the Ninth Circuit stayed the relevant Maldonado Bautista orders pending appeal to the extent they operate outside the Central District of California. Bautista, No. 26-1044, ECF No. 17. The stay does not constitute a final merits ruling, but it presently prevents Petitioner from relying on the nationwide operation of the class judgment while he is detained in this District.

28. Under the Government's application of *Matter of Yajure Hurtado*, the San Diego Immigration Court will not provide Petitioner an individualized bond hearing under § 1226(a).[1] DHS parole remains a separate discretionary mechanism controlled by the detaining agency; it is not a neutral custody-redetermination hearing.

LEGAL FRAMEWORK

29. Section 1226(a) establishes the default detention framework for noncitizens already present in the United States and permits release on bond or conditional parole. Jennings, 583 U.S. at 303. Sections 1225(b)(1) and (b)(2), by contrast, use mandatory language for applicants for admission within their scope. *Id.* at 297–303. *Matter of Yajure Hurtado* reads § 1225(b)(2)(A) to cover all persons present without admission, including long-term interior residents arrested years after entry; Maldonado Bautista reached the contrary conclusion based on the INA's text, structure, and detention framework.

30. Freedom from physical detention lies at the core of the liberty protected by the Due Process Clause. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Procedural due process ordinarily requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The required procedures turn on the private interest, the risk of erroneous deprivation and value of additional safeguards, and the Government's interest. *Id.* at 335.

31. *Rodriguez Diaz v. Garland* held that the existing § 1226(a) procedures were constitutionally adequate, facially and as applied, for a detainee who had received an initial individualized bond hearing and retained regulatory avenues to seek reconsideration upon materially changed circumstances. 53

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[1] Petitioner has not requested a bond hearing before the San Diego Immigration Court because doing so would be futile. As set forth in ¶ 27, supra, the Ninth Circuit stayed Maldonado Bautista's vacatur of *Yajure Hurtado* to the extent it operates outside the Central District of California, and San Diego lies outside that District. *Yajure Hurtado* therefore remains binding in this District, leaving Immigration Judges no discretion to hold a § 1226(a) bond hearing.

F.4th 1189 (9th Cir. 2022). The court expressly did not foreclose all as-applied due-process challenges. *Id.* Petitioner's claim is materially different: the Government's position denies him any initial neutral custody hearing at all.

32. When a bond hearing is provided, the adjudicator ordinarily considers the nonexclusive factors in *Matter of Guerra*, including fixed address, length of residence, family ties, employment, appearance history, criminal history, immigration history, attempts to flee, and manner of entry. 24 I&N Dec. 37, 40 (BIA 2006). Courts may review whether the governing legal standard was applied, without reweighing the evidence. Martinez, 124 F.4th at 782–85. Recent decisions have granted habeas relief when immigration judges failed to articulate or apply that framework. See *Miri v. Bondi*, No. 5:26-cv-00698-MEMF-MAR, 2026 WL 622302, at *8–12 (C.D. Cal. Mar. 5, 2026); *Perez Velasquez v. Bondi*, No. 3:26-cv-01759-GPC-DDL, 2026 WL 1042479, at *4–13 (S.D. Cal. Apr. 16, 2026). Those cases concern deficient hearings; Petitioner alleges the more fundamental absence of any hearing.

CLAIMS FOR RELIEF

COUNT ONE

DETENTION EXCEEDS STATUTORY AUTHORITY BECAUSE § 1226(a), NOT § 1225(b)(2)(A), GOVERNS PETITIONER'S INTERIOR ARREST

33. Petitioner realleges and incorporates paragraphs 1 through 32.

34. Section 1225(a)(1) defines an "applicant for admission" to include a noncitizen who is present in the United States without having been admitted. The disputed question is not whether that definition exists, but whether § 1225(b)(2)(A)'s command concerning an applicant for admission who is "seeking admission" supplies the detention authority for a person arrested in the interior nearly nineteen years after entry, or whether § 1226(a)'s express framework for arrest, detention, and release pending a removability decision governs that interior arrest.

35. Petitioner was not apprehended at the border, at a port of entry, or while attempting to enter. He was arrested in Palm Beach County during ordinary daily activity after nearly nineteen years of continuous residence. Applying § 1225(b)(2)(A) to that arrest collapses much of § 1226(a)'s interior-arrest framework and produces the statutory conflict identified in Maldonado Bautista.

36. Maldonado Bautista held that the Government's categorical policy of applying § 1225(b)(2)(A) to the certified class was unlawful and later vacated *Matter of Yajure Hurtado*. The Ninth Circuit's partial stay suspends the practical operation of that relief outside the Central District while the appeal is pending; it is not a final appellate adjudication adopting the BIA's interpretation. This Court therefore must resolve Petitioner's individual statutory claim under the governing statutes and controlling precedent.

37. Because 1226(a) governs Petitioner's custody, Respondents' refusal to provide the custody-redetermination process available under that provision exceeds statutory authority. Petitioner is therefore entitled to immediate release from custody or, in the alternative, a prompt § 1226(a) bond hearing before a neutral decision maker at which the government bears the burden of proving that his continued detention is lawful and necessary.

COUNT TWO

COMPLETE DENIAL OF AN INDIVIDUALIZED CUSTODY HEARING VIOLATES THE FIFTH AMENDMENT AS APPLIED

38. Petitioner realleges and incorporates paragraphs 1 through 37.

39. The Fifth Amendment protects every person within the United States from deprivation of liberty without due process of law. U.S. Const. amend. V; Zadvydas, 533 U.S. at 693–94; *Mathews v. Diaz*, 426 U.S. 67, 77 (1976).

40. The Mathews factors favor an individualized custody hearing. Petitioner's physical liberty and continued relationship with four U.S. citizen children are substantial interests. The risk of error is acute because no neutral decisionmaker has assessed flight risk, danger, available conditions, or the reliability of the Government's custody premise. A focused custody hearing would materially reduce that risk, while imposing a familiar and limited administrative burden.

41. This claim does not seek the periodic supplemental hearing rejected on the facts of Rodriguez Diaz. Petitioner has never received an initial bond hearing. The safeguards that Rodriguez Diaz found significant under § 1226(a)—an individualized initial determination, representation, presentation of evidence, administrative review, and reconsideration upon changed circumstances—are categorically unavailable under Respondents' asserted classification. 53 F.4th 1189.

42. Because the Government has made no individualized finding that Petitioner presents a danger or flight risk, continued detention rests solely on a categorical legal classification. On the alleged facts, no criminal history, a fixed community, nearly nineteen years of residence, stable employment, and extensive family ties, the Fifth Amendment requires at least a prompt hearing before a neutral decisionmaker to determine whether detention is necessary and whether reasonable conditions can mitigate any identified risk.

43. At that hearing, the Court should require a reasoned decision applying the Guerra factors. Petitioner further requests that the Government bear the burden by clear and convincing evidence because physical liberty is at stake and because the Government's categorical policy has prevented any prior individualized process. See Singh, 638 F.3d at 1203–05. Petitioner recognizes that Rodriguez Diaz declined to impose that burden for a second § 1226(a) hearing on the materially different record before it; the requested allocation is presented as an as-applied remedy for the complete absence of an initial hearing.

COUNT THREE (IN THE ALTERNATIVE)

ARBITRARY TRANSFER-BASED DENIAL OF CUSTODY REVIEW VIOLATES EQUAL-PROTECTION PRINCIPLES INCORPORATED IN THE FIFTH AMENDMENT

44. Petitioner realleges and incorporates paragraphs 1 through 43.

45. The equal-protection component of the Fifth Amendment prohibits the federal government from drawing irrational distinctions among similarly situated persons. *Bolling v. Sharpe*, 347 U.S. 497, 499–500 (1954). Noncitizens physically present in the United States are "persons" protected by the Fifth Amendment. *Mathews v. Diaz*, 426 U.S. at 77; see also *Plyler v. Doe*, 457 U.S. 202, 210 (1982).

46. Under the present stay posture, otherwise similarly situated class members detained in the Central District of California may invoke Maldonado Bautista to seek bond consideration, while Petitioner may not because ICE transferred him from Florida to a facility in the Southern District. Petitioner did not select or control the place of detention.

47. To the extent Respondents intentionally rely on the place of detention they selected as the sole reason to deny Petitioner any individualized review, that distinction is arbitrary as applied and bears no rational relationship to his flight risk, dangerousness, or the purposes of civil immigration

detention. This claim is pleaded in the alternative. Petitioner recognizes that the Ninth Circuit's partial stay itself supplies the immediate procedural backdrop; the claim concerns Respondents' transfer and custody choices, not a collateral challenge to the stay order.

EXHAUSTION

48. Any habeas exhaustion requirement applicable here is prudential rather than jurisdictional. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017); *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007). A court may excuse exhaustion when administrative remedies are inadequate, futile, would cause irreparable injury, or the administrative process would be void. *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Under *Matter of Yajure Hurtado* and the present stay posture, the San Diego Immigration Court lacks authority to grant the § 1226(a) hearing Petitioner seeks.

49. Under *Matter of Yajure Hurtado*, as reinforced by the Ninth Circuit's stay of the district court's orders outside the Central District of California, Immigration Judges in the Southern District of California lack authority to conduct a § 1226(a) bond hearing for detainees whom DHS classifies under § 1225(b)(2)(A). Any request for a bond hearing would therefore be denied as a matter of law, making exhaustion futile. Moreover, each additional day of detention inflicts an ongoing deprivation of Petitioner's physical liberty and separates him from his four U.S. citizen children, causing irreparable injury that further excuses any prudential exhaustion requirement.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

a. Assume jurisdiction and order Respondents to show cause why the writ should not be granted;

b. Declare that Petitioner's detention is governed by 8 U.S.C. § 1226(a), rather than § 1225(b)(2)(A);

c. Order Respondents to immediately release Petitioner from custody on recognizance or reasonable noncustodial conditions;

d. Enjoin Respondents from re-detaining Petitioner unless his re-detention is ordered at a custody hearing before a neutral judge in which the government bears the burden of proving, by clear and convincing evidence, that he is a flight risk or danger to the community;

e. Alternatively, order Respondents, within seven days, to provide an individualized custody hearing before an immigration judge or another neutral decisionmaker with authority to order release, applying the *Matter of Guerra* factors and issuing a reasoned decision;

f. Order, as an as-applied procedural safeguard, that the Government justify continued detention by clear and convincing evidence of danger or flight risk and that the decisionmaker consider reasonable alternatives to detention;

g. Enjoin Respondents from transferring Petitioner outside this District during the pendency of this action without advance notice to Petitioner and the Court;

h. Award costs and, if Petitioner qualifies and the statutory requirements are satisfied, attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and

i. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 17th day of July 2026.

/s/ Maisoun Y. Sulfab
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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner, Amner Joram Escalante Gomez (A# [redacted]), and submit this verification on her behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 U.S.C. § 1621.

Dated this 17th day of July 2026.

/s/ Maisoun Y. Sulfab
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