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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'26CV4744 JES VET

Tomas Alfredo PASCUAL FELIX,

Petitioner,

v.

CHRISTOPHER J. LAROSE, Senior Warden, Otay Mesa Detention Center, San Diego, California; GREGORY J. ARCHAMBEAULT, Field Office Director, San Diego Office of Detention and Removal, U.S. Immigrations and Customs Enforcement; U.S. Department of Homeland Security; DAVID J. VENTURELLA, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; DAREN K. MARGOLIN, Acting Director for Executive Office for Immigration Review; MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security; TODD BLANCHE, Attorney General of the United States;

Respondents.

CIVIL CASE NO.:

AGENCY NO. [redacted]

PETITION FOR WRIT OF HABEAS CORPUS AND ORDER TO SHOW CAUSE WITHIN THREE DAYS; COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

INTRODUCTION

1. Petitioner, Tomas Alfredo Pascual Felix (hereinafter "Mr. Pascual Felix" or "Petitioner"), a 24-year-old native and citizen of Guatemala. He last entered the United States without inspection in spring of 2023. He has not departed the United States since that date.

2. On or around July 29, 2026, Respondents arrested and detained Petitioner in San Diego County.

3. Mr. Pascual Felix is now currently detained at the Otay Mesa Detention Center by immigration authorities and is the subject of pending removal proceedings.

4. Respondents did not make an individualized custody determination at the time of detention and instead claim that Petitioner is subject to mandatory detention pursuant to INA § 1225(b).

5. Pursuant to *Matter of Yajure-Hurtado* 29 I&N Dec. 216 (BIA 2025) and Executive Office for Immigration Review ("EOIR") policy, Respondents have taken the position that 8 U.S.C. § 1225(b)(2)(A) applies to all noncitizens who entered the United States without valid entry documents, regardless of the length of their residence in the United States or the location at which they were apprehended, and therefore such individuals are subject to mandatory detention pending removal proceedings.

6. This reading is a violation of the statute and due process.

7. As such, Petitioner seeks an order of declaratory and injunctive relief and set aside relief under the Administrative Procedure Act requiring that he be released. A bond hearing before an immigration judge is an inadequate remedy for the ongoing constitutional violations in this case. *See* ¶¶ 43-55.

8. In the alternative, Petitioner request he be provided an individualized bond redetermination hearing before an immigration judge.

9. In the interim, Petitioner seeks an order from the Court that he is not removed from this judicial district pending disposition of their petition for writ of habeas corpus.

PARTIES

10. Petitioner, Tomas Alfredo Pascual Felix, is a 24-year-old native and citizen of Guatemala, who has been detained by Immigration and Customs Enforcement ("ICE") since approximately July 29, 2026.

11. Respondent Christopher J. LaRose is the Senior Warden of Otay Mesa. He is employed by CoreCivic, a private, for-profit corporation that owns and manages private prisons and detention centers. Respondent LaRose is the immediate physical custodian of Petitioner. He is sued in his official capacity.

12. Respondent Gregory J. Archambeault is the San Diego ICE Field Office Director. In this capacity, he has responsibility for and authority over the detention and removal of noncitizens housed at Otay Mesa; is authorized to release

Petitioner; and is a legal and immediate custodian of Petitioner. He has supervisory authority over ICE detention and deportation officers assigned to Otay Mesa. He is sued in his official capacity.

13. Respondent David J. Venturella is the Acting Director of U.S. Immigration and Customs Enforcement. As the highest-ranking officer for ICE, he has authority over all of the policies challenged in this action. He is sued in his official capacity.

14. Respondent Daren K. Margolin is the Acting Director for Executive Office for Immigration Review, which is a component agency of the Department of Justice responsible for conducting removal and bond hearings of noncitizens. EOIR is comprised of a lower adjudicatory body administered by immigration judges and an appellate body known as the Board of Immigration Appeal (BIA). Immigration judges issue bond redetermination hearing decisions, which are then subject to appeal to the BIA. He is sued in his official capacity.

15. Respondent Markwayne Mullin is the Secretary of the U.S. Department of Homeland Security ("DHS"), and is sued in his official capacity. The Secretary of Homeland Security is charged with the administration and enforcement of immigration laws. 8 U.S.C. § 1103(a).

16. Respondent Todd Blanche is the Attorney General of the United States and is sued in his official capacity as the head of the Department of Justice. The

Attorney General is responsible for the fair administration of the laws of the United States.

JURISDICTION AND VENUE

17. This Court has jurisdiction under 28 U.S.C. § 2241 (federal habeas statute); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2201-2 (declaratory judgment); United States Constitution Article I, Section 9 (Suspension Clause).

18. Petitioner is currently detained in the custody of Respondents at the Otay Mesa Detention Facility in San Diego, California. Venue lies in the United States District Court for the Southern District of California, the judicial district in which Petitioner is currently in custody. Venue is proper in the Southern District of California under 28 U.S.C.A. § 1391, as venue is proper in any district in which a defendant resides, and a substantial part of the events giving rise to Petitioner's claims occurred in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

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

20. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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) (citation omitted).

EXHAUSTION OF REMEDIES

21. Habeas claims are generally accompanied by a prudential exhaustion requirement. *Hernandez v. Sessions*, 872 F.3d 976, 988(9th Cir. 2017)("The exhaustion requirement is prudential, rather than jurisdictional, for habeas claims").

22. "[A] court may waive the prudential exhaustion requirement if 'administrative remedies are inadequate or not efficacious, pursuit of administrative remedies would be a futile gesture, irreparable injury will result, or the administrative proceedings would be void.'" *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017) (quoting *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004)).

23. In this case, exhaustion would be futile because the Board of Immigration Appeals is obligated to apply the binding precedent of *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) to find that detention is mandatory under 8 U.S.C. § 1225(b)(2). *See, e.g., Garcia v. Noem*, No. 25-CV-2180-DMS-MMP, 2025 WL 2549431, at *4-5 (S.D. Cal. Sept. 3, 2025); *Valdovinos v. Noem*, No. 25-CV-2439 TWR (KSC), slip op. at 9 (S.D. Cal. Sept. 25, 2025).

24. If required to go through EOIR, Petitioner will suffer irreparable harm in the form of continued detention without a legally adequate opportunity to demonstrate his entitlement to bond.

25. Therefore, a writ of habeas corpus is the sole avenue to vindicate Mr. Pascual Felix's constitutional, statutory, and regulatory rights and restore his liberty.

LEGAL FRAMEWORK

Detention under the Immigration & Nationality Act: 8 U.S.C. §§ 1225 & 1226

26. The Immigration and Nationality Act (INA) prescribes three basic forms of detention for noncitizens in removal proceedings.

27. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard non-expedited removal proceedings before an immigration judge (IJ). *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are 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).

28. 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).

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

30. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

31. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended last year by the Laken Riley Act, Pub. L. No.119-1, 139 Stat. 3 (2025).

32. Following enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection were not considered detained under § 1225 and that they were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

33. Thus, in the decades that followed, most people who entered without inspection, unless they were subject to some other detention authority, received bond hearings. That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an IJ or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994);

see also H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

34. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy that rejected well-established understanding of the statutory framework and reversed decades of practice.[1]

35. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A). *Id.* The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

36. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado* 29 I&N Dec. 216 (BIA 2025. There, the Board 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 IJ bond hearings.

37. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. *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,*

[1] Available at https://www.aila.org/library/ice-memo-interim-guidance-regardingdetention-authority-for-applications-for-admission

No. 25-cv-2717-JES-AHG, 2025 WL 3030457 (S.D. Cal. Oct. 30, 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).

38. Section 1226 therefore leaves no doubt that it applies to people who face charges of being inadmissible to the United States, including those who are present without admission or parole.

39. By contrast, § 1225(b) applies to people arriving at U.S. ports of entry or who recently entered the United States within the past two years. The statute's entire framework is premised on inspections at the border of people who are "seeking admission" to the United States. 8 U.S.C. § 1225(b)(2)(A). Indeed, the Supreme Court has explained that this mandatory detention scheme applies "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).

40. Moreover, Petitioner meets the criteria of the Bond Eligible Class certified in *Maldonado Bautista v. Santacruz*, 813 F. Supp. 3d 1084 (C.D. Cal. 2025). Petitioner lacks lawful immigration status in the United States, entered the United States without inspection over two years ago, was not apprehended upon entry, and is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

Accordingly, Petitioner would fall within the class definition adopted by the district court in *Maldonado Bautista*. *See id.* at 1127.

41. Petitioner acknowledges the Ninth Circuit has stayed certification of the class and entry of final judgment in *Maldonado Bautista* outside the Central District of California. *See Bautista v. U.S. Dep't of Homeland Security*, No. 26-1044 (9th Cir. Mar. 31, 2026). Petitioner does not contend that his membership in the *Maldonado-Bautista* class alone entitles him to relief at this time. Rather, Petitioner submits that there are no material factual differences between his circumstances and those identified by the *Maldonado-Bautista* court.

42. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended.

Bond Hearing Before an Immigration Judge is an Inadequate Remedy

43. Due Process violation of unlawful detention is properly remedied by order of immediate release. *Monsalve v. Chestnut*, No. 1:26-cv-00626-DADCKD, 2026 U.S. Dist. LEXIS 17745, at *3 (E.D. Cal. Jan. 29, 2026); *Cajina v. Wofford*, No. 1:25-cv-01566-DAD-AC (HC), 2025 U.S. Dist. LEXIS 229609, at *2 (E.D. Cal. Nov. 21, 2025).

44. Immigration Judges cannot act as neutral arbiters in bond hearings where they have direct financial threat looming over their heads in rendering a decision.

45. EOIR and DOJ leadership have placed such a threat over individual immigration judges by terminating immigration judges who do not comply with policy objectives of DOJ or EOIR. *Singh v. Valdez*, Civil Action No. 26-cv-1109-WJM, 2026 U.S. Dist. LEXIS 71846, at *13 (D. Colo. Apr. 1, 2026)("To the contrary, the mounting evidence that bond determination hearings conducted in Immigration Court under § 1226(a) have preordained outcomes has become impossible to ignore. As a result, courts across the country have, with increasing frequency, ceased order[ing] even initial bond hearings in cases like this one involving unlawful detention under § 1225(b) because Respondents' conduct can no longer be attributed to mere negligence or ineptitude, . . . and doing so would effectively allow the Government to transform an unlawful detention into a lawful one through post-hoc justifications.")(omitting internal quote and citation"); *Singh v. Baltazar*, Civil Action No. 1:26-cv-00336-CNS, 2026 U.S. Dist. LEXIS 26444, at *14 (D. Colo. Feb. 9, 2026) *Lepe v. Andrew*s, 801 F. Supp. 3d 1104, 1119 (E.D. Cal. 2025); *Martinez v. Hyde*, 792 F. Supp. 3d 211, 223 n.23 (D. Mass. 2025); Nicholas Nehamas et al., How Trump Purged Immigration Judges to Speed Up Deportations, N.Y. Times (Apr. 9, 2026), https://www.nytimes.com/2026/04/09/us/politics/trump-miller-immigration-judges-purge.html ("Teresa Riley, the chief immigration judge, has received daily reports about bond rulings, according to a Justice Department official. **Her office has sometimes emailed judges asking for an explanation about their decisions**

to grant bond, three people said. Ms. Riley declined to comment. One current judge said the "pressure to deny bond is overt." **The judge said that there was a requirement to inform a supervisor every time bond was granted**, underscoring how closely the administration was monitoring decisions.") (*emphasis added*).

46. Over a hundred immigration judges have been fired, resigned, or retired in the wake of unprecedented interference with their independence and quasi-judicial function. Respondents have issued directives to immigration judges encouraging and, effectively ordering, that most bond requests should be denied on 'flight-risk' grounds.

47. Judges who do grant bond are fired, disciplined, or reassigned. Respondents are in possession of statistics showing drastic decrease in bond grant rates over the last 12 months despite no change in legal standard governing bond determinations.

48. Respondents are in possession of directives, memorandums, and correspondence with immigration judges and immigration courts wherein they directed that bond should rarely, if ever, be granted.

49. Even where bond hearings are granted, they are conducted in rushed and grossly unfair settings.

50. Noncitizens often have difficulties hearing judges or translators through video conferences from detention centers, have limited access to counsel

to prepare, and hearings are conducted rapidly without full consideration of evidence or testimony.

51. Immigration Judges do not have time to review filings submitted in support of request for release on bond prior to hearings.

52. Immigration Judges are not given the time or resources to adequately conduct fair bond or merits hearings in the detained or non-detained setting.

53. Immigration Judges often cite little or no reasoning in determining that noncitizens are a flight risk.

54. Appeals from Bond decisions take more than 6 months and data shows that the BIA has not reversed a denial of refusal of bond in the last 6 months.

55. Counsel is unaware of any bond denial being reversed by the BIA in the last 15 months, despite conversing with scores of practitioners regularly about this and related issues.

STATEMENT OF FACTS

56. Mr. Pascual Felix is a 24-year-old native and citizen of Guatemala.

57. Mr. Pascual Felix entered the United States without inspection over three years ago in 2023, and upon his last entry, was not apprehended.

58. Since his last entry, Mr. Pascual Felix has resided in the United States, worked, and has no criminal history.

59. On July 29, 2026, the Petitioner was stopped and detained by U.S. Immigration and Customs Enforcement (ICE) in his vehicle.

60. Mr. Pascual Felix had been driving to go hiking when he drove and was stopped at a CBP checkpoint on the 8-interstate highway.

61. Petitioner was taken into ICE custody at a CBP holding center for about a week. During that week, he was not allowed to communicate with any family members. During that week he slept on a mat on the floor with an aluminum sheet as a blanket.

62. Following the arrest, Petitioner was transported to the Otay Mesa Detention Center, where he remains detained today.

63. On August 6, 2026, Respondents commenced removal proceedings against Mr. Pascual Felix as someone who entered the United States without inspection.

64. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

CLAIMS FOR RELIEF

COUNT ONE
Violation of the INA

65. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

66. Pursuant to *Matter of Yajure Hurtado* 29 I&N Dec. 216 (BIA 2025), the government has a policy and practice of applying § 1225(b)(2) to individuals like Petitioner.

67. The government has taken the position that noncitizens who have entered the country without inspection are applicants for admission under § 1225(a)(1) and are seeking admission under § 1225(b)(2)(A), whether they are passively residing in the country or not.

68. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

69. The application of § 1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

70. 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.

COUNT TWO

Violation of 8 C.F.R. § 287.8(c)(2)(ii):

Warrantless Arrests Without Probable Cause of Flight Risk

71. Petitioner incorporates by reference the allegations of fact set forth in preceding paragraphs.

72. Respondents ICE arrested Petitioner without a warrant and without "reason to believe" that they were "likely to escape before a warrant can be obtained" in violation of 8 C.F.R. § 287.8(c)(2)(ii). The reason to believe standard meets the probable cause standard of the Fourth Amendment. *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019).

73. Arrest in violation of the regulation is unlawful. *See Sanchez v. Sessions*, 904 F.3d 643, 650 (9th Cir. 2018); *Perez Cruz v. Barr*, 926 F.3d 1128, 1137 (9th Cir. 2019).

COUNT THREE

Fifth Amendment: Violation of Due Process

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

75. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

76. Petitioner has a fundamental interest in liberty and being free from official restraint.

77. The government's detention of Petitioner violates his rights to due process because he has been detained without lawful authority, infringing on his fundamental right to liberty.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully prays the Court to:

1) Assume jurisdiction over this matter;
2) Order that Petitioner shall not be transferred outside the Southern District of California while this habeas petition is pending;
3) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three (3) days;
4) Issue a Writ of Habeas Corpus requiring that Respondents immediately release Petitioner;
5) In the alternative, provide Petitioner with an individualized bond hearing pursuant to 8 U.S.C. § 1226(a) within ten (10) days;
6) Award Petitioner his costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, other statute; and
7) Grant any other and further relief this Court deems just and proper.

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Dated this 19th of August, 2026

By: /s/ Priscilla Merida

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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the petitioner because I am the Petitioner's attorney. I have discussed with the Petitioner the events described in this Petition and Complaint. On the basis of those discussions, I hereby verify that the statements made in this Petition and Complaint are true and correct to the best of my knowledge.

Dated this 19th of August, 2026

By: /s/ Priscilla Merida

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