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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

FIDEL ARIAS TORRES, Petitioner, v. PAM BONDI, Attorney General of the United States, in her official capacity; KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; PATRICK DIVVER, ICE Field Office Director for San Diego County, in his official capacity; WARDEN OF OTAY MESA DETENTION CENTER. Respondents.	Case No. 3:25-cv-02457-BAS-MSB SECOND AMENDED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Petitioner Fidel Arias Torres has resided in California since 2001, with deep family and community ties. He is the beneficiary of an approved I-130 visa petition and appeared voluntarily for a scheduled USCIS adjustment-of-status interview on June 25, 2025. Instead of adjudicating his application, ICE arrested him at the interview and transferred him to the Otay Mesa ICE Processing Center.

2. On July 14, 2025, the Immigration Judge ("IJ") held a custody redetermination hearing under INA § 236(a). DHS argued that Petitioner was detained under § 235(b)(2) and therefore ineligible for bond based on a newly adopted policy of the DHS and EOIR.

3. By contrast, the INA and its implementing regulations provide that long-term residents apprehended in the interior and placed in § 240 removal proceedings are detained, if at all, under § 236(a), which expressly authorizes Immigration Judges to conduct custody redeterminations and set bond. The Ninth Circuit has confirmed that "applicant for admission" is a discrete event at entry, not a perpetual status attaching to everyone who entered without inspection. *Torres v. Barr*, 976 F.3d 918, 932 (9th Cir. 2020) (en banc).

4. Despite recent federal court rulings rejecting Respondents' position, DHS and EOIR continue to maintain that all noncitizens who entered the United States without inspection are categorically ineligible for bond under INA § 236(a), treating them instead as perpetual "applicants for admission" subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), regardless of how long they have resided in this country or where they were apprehended. This interpretation

directly contravenes the statutory framework, binding Ninth Circuit precedent, and the Fifth Amendment's Due Process Clause. See *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. Apr. 24, 2025), Dkts. 29, 38; *Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM (C.D. Cal. July 2025), Dkt. 14; *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020).

5. At the July 14, 2025 custody redetermination, the Immigration Judge rejected DHS's arriving-alien theory, found that Petitioner is not an arriving alien, determined § 236(a) governs custody, and concluded that Petitioner posed no danger and only a mitigated flight risk. The IJ ordered release on a $2,500 bond with Alternative to Detention (ATD).

6. Rather than accept the IJ's individualized determination, DHS/EOIR filed an EOIR-43 on July 14, 2025 to trigger the automatic stay under 8 C.F.R. § 1003.19(i)(2), without disputing the IJ's findings that Petitioner posed no danger and only a mitigated flight risk.

7. DHS then perfected its appeal on July 28, 2025, pressing a categorical position that long-term interior residents who originally entered without inspection are perpetual "applicants for admission" and therefore ineligible for bond under § 235(b)(2). The appeal did not challenge the IJ's individualized findings; its sole basis was the new categorical reclassification advanced by DHS/EOIR.

8. In July 2025, ICE circulated an internal memorandum articulating that categorical policy and instructing field counsel to resist § 236(a) custody redeterminations for persons who entered without inspection. The memorandum is attached as Exhibit G and is offered as evidence of the agency policy, its nationwide dissemination, and the application of the policy in this case.

9. On July 29, 2025 at 6:05 p.m., the evening after filing its formal notice of appeal arguing INA §235(b)(2) applied, DHS filed a Form I-261 "Notice of Corrected Filing" adding a charge under INA § 212(a)(7)(A)(i)(I) alleging Petitioner lacked entry documents "at the time of application for admission." (Exh J) This amendment post-dates the IJ's order and the appeal, and was filed solely to support DHS's categorical theory that all individuals who entered without inspection fall under § 235(b)(2) as perpetual "applicants for admission," notwithstanding their long-term residence and interior arrest.

10. The IJ had rejected that classification, and binding Ninth Circuit precedent forecloses it. "Application for admission" is a discrete event at entry, not a continuing status attaching to long-term residents arrested in the interior. *Torres v. Barr*, 976 F.3d 918, 932 (9th Cir. 2020) (en banc).

11. In September 2025, the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), formally adopting that categorical policy. (Exhibit H.)

12. On October 14, 2025, the BIA applied that policy to Petitioner's case, citing *Matter of Yajure Hurtado* as the basis for denying the statutory right to bond to noncitizens who entered without inspection. The BIA sustained DHS's appeal, effectively overruling the IJ's individualized custody determination and foreclosing administrative relief. The BIA decision constitutes final agency action with respect to Petitioner's bond. (Exhibit I.)

13. The net effect of DHS/EOIR's adoption and application of this categorical policy is to deprive long-term interior residents like Petitioner of the statutory bond protections of INA § 236(a). Instead of individualized, judge-

supervised bond determinations, Respondents treat such persons as per se ineligible for bond and maintain detention through the automatic stay and Hurtado precedent.

14. That outcome directly conflicts with Ninth Circuit precedent and the statutory and regulatory framework, inflicts prolonged deprivation of liberty on Petitioner and his U.S.-citizen family, and denies meaningful administrative process. Because the categorical policy has been applied to Petitioner and administrative relief is futile, habeas corpus and judicial intervention remain the only timely and effective avenues for vindicating his statutory and constitutional rights.

15. Petitioner seeks the following relief:

(a) A writ of habeas corpus directing Respondents to release him forthwith under the conditions set by the IJ's July 14, 2025 bond order, or such other conditions as the Court deems appropriate.

(b) Declaratory and injunctive relief, enjoining Respondents from enforcing or applying the categorical policy treating all aliens who entered without inspection as perpetually applicants for admission, and enjoining Respondents from applying that policy, including *Matter of Yajure Hurtado,* (29 I&N Dec. 216) to Petitioner and similarly situated long-term interior residents.

(c) Set-aside relief under the Administrative Procedure Act invalidating the categorical policy and requiring that individuals like Petitioner be afforded bond on conditions determined appropriate by an immigration judge in accordance with INA§ 236(a).

JURISDICTION AND VENUE

16. This Court has jurisdiction under 28 U.S.C. §§ 2241 and 1331. The Suspension Clause protects habeas review of civil immigration detention. See U.S. Const. art. I, § 9, cl. 2.

17. Venue properly lies in the Southern District of California under 28 U.S.C. § 1391(e)(1)–(2). Petitioner was arrested in this District, the Immigration Judge conducted bond proceedings here, and the ICE Field Office Director responsible for Petitioner's custody resides in this District. Although DHS may have transferred Petitioner outside the District, such transfer does not divest this Court of venue where the petition challenges systemic DHS and ICE policies and seeks relief that only those Respondents — not the immediate facility warden — can provide. See *Rumsfeld v. Padilla*, 542 U.S. 426, 436 n.8 (2004) (recognizing exceptions to the immediate-custodian rule). Because the petition challenges DHS and ICE policies governing bond eligibility, relief runs against higher-level officials and agencies located in this District, not solely the immediate custodian.

18. The Court may grant declaratory and injunctive relief under 28 U.S.C. §§ 2201–2202 and the APA, 5 U.S.C. § 702, to the extent necessary.

PARTIES

19. Petitioner Fidel Arias Torres is a native and citizen of Mexico who has resided continuously in California since 2001. He was arrested in this District on June 25, 2025, following his voluntary appearance for a USCIS adjustment interview, and remains detained in ICE custody

20. Respondent Pam Bondi is the Attorney General of the United States and is sued in her 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.

21. Kristi Noem, Secretary of the U.S. Department of Homeland Security (DHS), is sued in his official capacity as the Cabinet official charged with administration and enforcement of the immigration laws, including custody and release authority. See 8 U.S.C. § 1103(a).

22. Respondent Executive Office for Immigration Review 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. EOIR is sued as an agency respondent because its policies and decisions are at issue in this action.

23. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE) and is sued in his official capacity. ICE is responsible for the detention of Petitioners.

24. Patrick Divver is the Immigration and Customs Enforcement Field Office Director for San Diego County, including the Otay Mesa detention facility and is sued in his official capacity.

25. The Warden of Otay Mesa Detention Center is sued in his official capacity as the officer with immediate physical custody of Petitioner. The Warden is responsible for Petitioner's day-to-day detention but lacks authority to make custody or release determinations. He is named as a Respondent pursuant to the immediate custodian rule established in *Rumsfeld v. Padilla*, 542 U.S. 426 (2004).

LEGAL BACKGROUND

26. The Immigration and Nationality Act (INA) establishes four distinct detention regimes for noncitizens in removal proceedings. Section 236(a) (8 U.S.C. § 1226(a)) is the default, discretionary authority for individuals "*found in the United States*" and placed in § 240 proceedings; it expressly authorizes an immigration judge to conduct custody redeterminations at the outset of detention (see 8 C.F.R. §§ 1003.19(a), 1236.1(d)).

27. Section 236(c) (8 U.S.C. § 1226(c)) mandates detention for noncitizens charged with or convicted of certain criminal and terrorism-related offenses. Section 235(b)(1) & (b)(2) (8 U.S.C. § 1225) governs custody at the inspection stage, with expedited removal under subsection (b)(1) and other applicants for admission under subsection (b)(2). Finally, section 241 (8 U.S.C. § 1231) provides for post–final-order detention (not at issue here).

28. Section 236(a) governs the detention of long-term residents arrested in the interior and placed in § 240 removal proceedings. By its plain terms, it applies "*pending a decision on whether the [noncitizen] is to be removed from the United States*," and the implementing regulations vest an immigration judge with bond-hearing jurisdiction (8 C.F.R. §§ 1003.19(a), 1236.1(d)).

29. By contrast, section 235(b) applies exclusively at ports of entry. Its text and structure confirm that an "*application for admission*" is a single event occurring at entry, triggering inspection or fear-screening procedures. The Supreme Court in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), and this Court en banc in *Torres v. Barr*, 976 F.3d 918, 932 (9th Cir. 2020), held that "*applicant for admission*" is not a perpetual status but a discrete event at the border.

30. Regulatory history under IIRIRA reinforces this textual split. In its 1997 rulemaking, EOIR explained that persons who entered without inspection but are placed in § 240 proceedings remain detained under § 236(a), not § 235. See Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10,312, 10,323 (Mar. 6, 1997).

31. Despite that clear framework, ICE's July 2025 internal guidance directed field offices to treat all individuals who entered without inspection as "arriving aliens" under INA § 235(b)(2) and to contest their eligibility for bond under § 236(a), regardless of their length of residence or place of arrest. The directive effectively removes immigration judge authority to grant bond in such cases, substituting categorical detention for individualized custody determinations.

32. In September 2025, the BIA adopted this position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that all individuals who entered the United States without inspection are categorically ineligible for bond, regardless of their length of residence in the country or location of arrest.

33. Several district courts in this Circuit have enjoined that categorical policy and ordered release or bond under § 236(a) for long-term residents arrested in the interior. See *Rodriguez Vazquez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. Apr. 24, 2025); *Bautista v. Sec'y of DHS*, No. 5:25-cv-01873 (C.D. Cal. July 2025).

34. Petitioner is a long-term California resident arrested in the interior and placed in § 240 removal proceedings. Petitioner is prima facie eligible for cancellation of removal under INA § 240A(b)(1) as a long-term resident with U.S.

citizen qualifying relatives. He has resided continuously in the United States for more than ten years, has demonstrated good moral character, and has U.S. citizen family members who would suffer exceptional and extremely unusual hardship if he were removed. Petitioner is pursuing this relief, as well as adjustment of status, in his removal proceedings.

35. The Immigration Court has not yet made any determination as to whether Petitioner should be removed. On October 14, 2025, the BIA applied *Hurtado* to Petitioner, sustained DHS's appeal, and reversed the IJ's individualized bond order pursuant to that categorical policy—constituting final agency action.

36. Under the INA's text, its implementing regulations, and controlling Ninth Circuit authority, § 236(a) governs Petitioner's detention and bond rights. The government's contrary, categorical reliance on § 235(b)(2) directly conflicts with this statutory and regulatory scheme, forecloses any meaningful administrative remedy, and necessitates this Court's intervention.

FACTUAL AND PROCEDURAL BACKGROUND

37. Mr. Arias Torres has lived in California since 2001, where he co-owns a licensed construction business, files taxes, and is active in his church. He is married, the father of three children (including a U.S. citizen), and has no criminal history beyond a minor traffic infraction. His extended U.S.-citizen family and long-term residence underscore his deep ties to the community.

38. On June 25, 2025, after voluntarily appearing for a USCIS adjustment of status interview based on an approved I-130 petition, ICE officers arrested him and served a Notice to Appear, placing him in § 240 removal proceedings. He was transferred to the Otay Mesa ICE Processing Center.

39. Although USCIS denied Respondent's adjustment application at the interview and placed him into removal proceedings, that denial was not dispositive. Respondent filed an administrative motion to reopen and the issue is still pending.

40. In addition, once DHS issued the Notice to Appear, jurisdiction over Respondent's application for adjustment of status transferred exclusively to the Immigration Judge under 8 C.F.R. § 1245.2(a)(1)(i), which provides that "*in the case of any alien who has been placed in deportation proceedings or in removal proceedings ... the immigration judge hearing the proceeding has exclusive jurisdiction to adjudicate any application for adjustment of status the alien may file.*" See also 8 C.F.R. § 1240.11(a)(1) (requiring the IJ to advise respondents of apparent eligibility for relief and afford them an opportunity to apply).

41. Respondent is actively pursuing lawful status through this renewed adjustment application based on the approved I-130 petition filed by his U.S. citizen father.

42. These pending avenues of relief underscore his strong family ties, long-term residence, and deep equities — further supporting the Immigration Judge's finding that Respondent poses no danger and only a mitigated flight risk.

43. On July 7, 2025, Mr. Arias Torres moved for custody redetermination under INA § 236(a). At the July 14 hearing, the Immigration Judge ruled that § 236(a) governs because he is not an arriving alien; found he posed no danger and only a mitigated flight risk; and set bond at $2,500 with ATD conditions. On July 31, the IJ issued a written memorandum to assist the Board of Immigration Appeals with review.

44. DHS appealed, invoking the automatic stay under 8 C.F.R. §

1003.19(i)(2). In its appeal, DHS advanced the categorical theory that all individuals who entered without inspection are subject to mandatory detention under INA § 235(b)(2) and therefore ineligible for bond. The Immigration Judge — consistent with every federal court to consider the issue — had rejected that theory, explaining that Mr. Arias Torres's interior arrest decades after entry placed him squarely within § 236(a), not § 235(b)(2).

45. Nevertheless, in September 2025 the Board of Immigration Appeals issued *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), adopting DHS's categorical no bond position.

46. On October 14, 2025, the BIA applied that precedent to Petitioner, sustained DHS's appeal, and reversed the IJ's bond order; that BIA disposition as applied to Petitioner constitutes the operative final agency action foreclosing administrative relief in his case (Exhibit I).

47. Even if the Ninth Circuit ultimately rejects *Matter of Yajure Hurtado*, appellate review will likely take months or years, during which Petitioner would remain detained without bond.

48. This prolonged detention renders administrative remedies illusory and makes habeas, injunctive, and declaratory relief from this Court the only timely and effective means to vindicate his statutory and constitutional rights. Petitioner remains detained in the custody of DHS at the Otay Mesa Detention Facility.

CAUSES OF ACTION

COUNT I
Violation of 8 U.S.C. § 1226(a): Unlawful Continued Detention

49. Petitioner repeats, re-alleges, and incorporates by reference each and

every allegation in the preceding paragraphs as if fully set forth herein.

50. Under 8 U.S.C. § 1226(a), noncitizens apprehended in the interior and placed in § 240 removal proceedings are detained, if at all, subject to discretionary bond redetermination by an immigration judge.

51. On July 14, 2025, the IJ found that Petitioner is not an "arriving alien," determined that he posed no danger and only a mitigated flight risk, and ordered release on a $2,500 bond with ATD.

52. Although 8 C.F.R. § 1003.19(i)(2) provides for an automatic stay of release pending appeal, Congress did not intend that mechanism to function as a categorical override of immigration judges' bond authority or to perpetuate detention for years where an IJ has already determined release is appropriate.

53. The congressional intent is reflected in § 236(a), which expressly authorizes custody redeterminations and release on bond "pending a decision on whether the alien is to be removed from the United States," and is confirmed by § 240A(b)(1), which authorizes cancellation of removal for long-term residents to prevent exceptional hardship to U.S. citizen spouses and children — not to inflict that hardship through prolonged and unnecessary detention while removal proceedings drag on.

54. DHS's conduct in this case illustrates precisely why § 236(a) governs. After the Immigration Judge determined that Petitioner was not an "arriving alien" and ordered release, DHS first filed a notice of intent to appeal to trigger the automatic stay, and only then — after perfecting its appeal — amended the charges to allege a § 212(a)(7)(A)(i)(I) inadmissibility ground. That post-appeal amendment was not based on new facts or evidence, but an effort to retroactively

manufacture "arriving alien" status to fit DHS's newly-announced categorical position that all individuals who entered without inspection fall under § 235(b)(2) detention. Binding Ninth Circuit law forecloses such perpetual "applicant for admission" status. Torres v. Barr, 976 F.3d 918, 932 (9th Cir. 2020) (en banc). DHS's post-hoc charge confirms that it is reclassifying long-term residents to avoid § 236(a) judicial review rather than applying the statutory scheme Congress enacted.

55. On October 14, 2025, the BIA applied *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), to Petitioner, sustained DHS's appeal, and reversed the IJ's bond order based on DHS's categorical misclassification of Petitioner as an "arriving alien."

56. This action exceeds the statutory authority conferred by Congress, unlawfully denies Petitioner the release Congress authorized, and frustrates the family-unity protections embedded in both bond and cancellation-of-removal provisions.

57. On October 14, 2025, the BIA applied *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), to Petitioner, sustained DHS's appeal, and reversed the IJ's bond order based on DHS's categorical misclassification of Petitioner as an "arriving alien."

58. This action exceeds the statutory authority conferred by Congress, unlawfully denies Petitioner the release Congress authorized, and frustrates the family-unity protections embedded in both bond and cancellation-of-removal provisions.

59. Accordingly, Respondents' actions have resulted in Petitioner's continued unlawful detention, violate the Immigration and Nationality Act, and entitle him to habeas corpus, declaratory, and injunctive relief.

COUNT II
Violation of the Administrative Procedure Act (5 U.S.C. § 706)
Unlawful Denial of Bond Jurisdiction

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

61. The INA and its implementing regulations authorize Immigration Judges to redetermine custody for noncitizens apprehended in the interior and placed in § 240 proceedings. See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1003.19(a), 1236.1(d). For decades, EOIR and DHS consistently applied § 236(a) to such individuals, affording Immigration Judges jurisdiction to set bond consistent with the statute's text and EOIR's 1997 rulemaking.

62. In July 2025, however, ICE abruptly abandoned this settled practice. Through an internal memorandum, ICE instructed its trial attorneys to resist § 236(a) bond jurisdiction across the board for all who had entered without inspection, regardless of how long they had resided in the United States or where they were arrested. That directive, though aimed at DHS attorneys, had the practical effect of shifting the adjudicatory framework once EOIR began adopting the same categorical position.

63. DHS's *post-hoc* amendment underscores the APA violation. Agencies may not retroactively invent jurisdictional predicates or fabricate a statutory classification after losing before a neutral adjudicator. See *Encino Motorcars, LLC*

v. Navarro, 579 U.S. 211, 221–22 (2016) (agency reversal without reasoned explanation is arbitrary and capricious).

64. Here, DHS filed a Form I-261 on July 29, 2025 at 6:05 p.m. — the day after perfecting its appeal on July 28, 2025 and weeks after triggering the automatic stay on July 14, 2025 — solely to "paper" a § 235(b)(2) theory that did not apply at the time of arrest. This post-appeal amendment constitutes exactly the sort of post-hoc rationalization the APA prohibits. The government did not apply the statute; it attempted to rewrite the record to align with a categorical detention policy. That violates basic principles of reasoned decision-making and independent judicial review recognized in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024) and *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016).

65. Two months later, in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), the Board of Immigration Appeals formally ratified that position, holding that all noncitizens who entered without inspection are detained under § 235(b)(2) and categorically ineligible for bond. That decision stripped Immigration Judges of jurisdiction to grant or effectuate bond, even where an IJ had already found release appropriate. On October 14, 2025, the BIA applied that ruling to Petitioner, sustained DHS's appeal, and reversed the IJ's bond order. (Exh I)

66. This abrupt reversal of decades of practice was adopted without notice and comment, lacks reasoned explanation, and is contrary to the governing statute and regulations. The BIA's post hoc rationale in *Yajure Hurtado* cannot cure those defects.

67. Under *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024),

this Court owes no Chevron deference to the agency's construction of § 235(b)(2), but must apply its own judgment to the statutory text. Properly construed, § 235(b)(2) does not apply to long-term residents arrested in the interior and placed in § 240 proceedings.

68. Accordingly, Respondents' categorical reclassification is unlawful, arbitrary, capricious, and not in accordance with law within the meaning of 5 U.S.C. § 706(2).

COUNT III
Violation of Procedural Due Process (Fifth Amendment)

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

70. The Fifth Amendment provides that no person shall be deprived 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). Noncitizens in removal proceedings possess a fundamental interest in liberty and in being free from unnecessary official restraint.

71. Here, Petitioner was afforded an individualized custody redetermination under § 236(a). The Immigration Judge found that he is not an "arriving alien," determined that he posed no danger and only a mitigated flight risk, and ordered his release on bond with conditions. Due process required that this individualized determination be honored, absent a lawful statutory basis for continued detention.

72. Procedural due process also bars detention based on post-hoc manipulation of charging documents designed to defeat an IJ's individualized custody determination. The government may not retroactively impose mandatory detention after a neutral adjudicator has already found release appropriate. DHS's after-the-fact amendment to force a categorical detention regime — rather than present evidence of danger or flight risk — denies Petitioner the meaningful opportunity for release the Constitution requires. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

73. Respondents' invocation of § 235(b)(2) and reliance on the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) to nullify the IJ's bond order, combined with their categorical refusal to recognize § 236(a) jurisdiction for noncitizens who entered without inspection, deprives Petitioner of a meaningful opportunity for release.

74. This action ensures that even individuals found releasable by an IJ remain imprisoned for months or years despite a judicial finding that release is appropriate.

75. Further, Congress expressly recognized that long-term residents develop deep family and community ties and that removal proceedings must account for the "exceptional and extremely unusual hardship" that detention and removal inflict on U.S. citizen spouses and children. 8 U.S.C. § 1229b(b)(1).

76. Respondents' categorical detention policy and their refusal to honor IJ bond determinations defeat that congressional intent, prolonging separation and inflicting the very harms Congress sought to prevent.

77. Such continued detention without effectual access to bond and release violates procedural due process. At a minimum, due process requires that individuals in civil immigration custody have a meaningful opportunity for release before a neutral adjudicator, with consideration of ability to pay, alternatives to detention, and with the government bearing the burden of proof by clear and convincing evidence.

78. By overriding the IJ's bond order and foreclosing further individualized review, Respondents' policy and practice violate the Fifth Amendment.

PRAYER FOR RELIEF

Petitioner respectfully requests that this Court:

A. Declare that INA § 236(a), not § 235(b)(2), governs Petitioner's custody as a long-term resident arrested in the interior and placed in § 240 proceedings, and that Respondents' contrary application of § 235(b)(2) is unlawful as applied to Petitioner;

B. Enjoin Respondents from enforcing any categorical policy or practice that denies Immigration Judges jurisdiction to grant or effectuate bond under § 236(a) as applied to Petitioner, a noncitizen who entered without inspection, was found in the United States, and was placed in § 240 proceedings;

C. Set aside Respondents' unlawful detention policy—as reflected in the July 2025 ICE memorandum and ratified and applied through *Matter of Yajure Hurtado*—and enjoin its enforcement against Petitioner;

D. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner forthwith under the conditions set forth in the Immigration

Judge's July 14, 2025 bond order, or, in the alternative, under such conditions as this Court deems appropriate;

E. Award reasonable attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, or any other applicable authority;

F. Grant such other and further relief as this Court deems just and proper.

Dated: November 03, 2025

Respectfully submitted,

/s/ Pedro De Lara, Jr.
Pedro De Lara, Jr.

/s/LeRoy George Siddell
LeRoy George Siddel

Attorneys for Petitioner

VERIFICATION

I, Fidel Arias Torres, declare under penalty of perjury that I have read this Petition and that the facts stated herein are true and correct to the best of my knowledge and belief. Executed at CCA DET. FAC. in Otay Mesa, California, on October 27, 2025.

Fidel Arias Torres. Petitioner

EXHIBIT LIST

A . IJ's Bond Order (July 14, 2025) and Written Memorandum (July 31, 2025).

B. DHS EOIR-43, Notice of Appeal (July 14, 2025).

C. Request to Appear for Adjustment of Status Interview

D. Notice to Appear- Removal Proceedings

E. Motion for Custody Redetermination (July 7, 2025)

F. Excerpts of Exhibit -Letters of Support; Residence, Business, Tax, Church Records.

G. ICE Memorandum re New Bond Policy (July 2025).

H. BIA Decision: *Matter of Yajure Hurtado* (Sept. 2025).

I. BIA Final Order dated October 14, 2025

J. I-216 Amendment to Charges (July 29, 2025)