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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CRISTOFER GARCIA MAGADAN

Petitioner

v.

Kristi NOEM, Secretary, U.S. Department of Homeland Security;

Todd LYONS, Acting Director, U.S. Immigration and Customs Enforcement;

Patrick DIVVER, Field Office Director, San Diego Field Office, U.S. Immigration and Customs Enforcement.

Christopher LAROSE, Senior Warden, Otay Mesa Detention Center;

Sirce OWEN, Acting Director of the Executive Office for Immigration Review (EOIR), U.S. Department of Justice.

Pamela BONDI, Attorney General, U.S. Department of Justice.

Respondents

Case No.: '25CV2889 JES KSC

Agency File No: A[redacted]

PETITION FOR WRIT OF HABEAS CORPUS AND REQUEST FOR ORDER TO SHOW CAUSE WITHIN THREE DAYS

INTRODUCTION

1. Petitioner, Cristofer Garcia Magadan, is a Mexican national who has lived in the United States since 2008, and is currently in DHS custody at the Otay Mesa Detention Center.

2. Petitioner now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have adopted a new interpretation of the Immigration and Nationality Act (INA), recently formalized by the Board of Immigration Appeals (BIA) in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which treats all individuals who entered without inspection as "applicants for admission" subject to mandatory detention under INA § 235(b)(2)(A).

3. The newly adopted interpretation bars noncitizens like Petitioner from seeking release on bond under INA § 236 (8 U.S.C. § 1226) and the procedures provided in 8 C.F.R. §§ 1003.19(a), 1236.1(d). Because this interpretation removes Immigration Judge jurisdiction over custody determinations for individuals who entered without inspection, any request for a bond hearing before EOIR would be futile. As further discussed in the Exhaustion of Remedies section below, administrative review is unavailable and ineffective.

4. On August 1, 2025, Immigration Judge Mark Sameit, sitting at the Otay Mesa Immigration Court, conducted a bond redetermination hearing. The Department of Homeland Security argued that the Court lacked jurisdiction, asserting that Petitioner was an "applicant for admission" detained under INA § 235(b)(2). After hearing arguments, Judge Sameit determined that jurisdiction lay under § 236(a) and granted release on a $4,500 bond with Alternatives to Detention (ATD) supervision at the discretion of DHS. See *Exhibit 3* (Order of the Immigration Judge).

5. The Department of Homeland Security appealed the Immigration Judge's bond determination to the Board of Immigration Appeals pursuant to 8 C.F.R. § 1003.19(i)(2), which automatically stayed the order pending review.

6. On September 29, 2025, the Board of Immigration Appeals sustained the Department's appeal and vacated the Immigration Judge's bond order, relying on its precedential decision in *Matter of Yajure Hurtado*. See *Exhibit 4* (Decision of the Board of Immigration Appeals).

7. Petitioner's continued detention on this basis violates the plain text of the INA, decades of longstanding agency practice, and the constitutional guarantees of Due Process.

8. This habeas petition challenges the government's position that Petitioner is subject to mandatory custody under INA § 235 (8 U.S.C. § 1225).

9. Petitioner seeks a writ of habeas corpus ordering his immediate release on the $4,500 bond previously authorized by the Immigration Judge, or, in the alternative, a constitutionally adequate bond hearing before a neutral decisionmaker at which the Government must prove, by clear and convincing evidence, that continued detention is warranted under the Due Process Clause of the Fifth Amendment.

JURISDICTION AND VENUE

10. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in the custody of the Department of Homeland Security within this District and he challenges the legality of that custody.

11. This Court also has jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, including the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

12. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section 1252(g) bars only challenges to the Attorney General's discretionary decisions to "commence proceedings, adjudicate cases, or execute removal orders," not independent challenges to unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts of appeals, but does not foreclose habeas review of detention claims, which are collateral to the removal proceedings.

13. Venue is proper in this District under 28 U.S.C. § 1391(e) because Petitioner is detained at the Otay Mesa Detention Center, which lies within the jurisdiction of this Court.

PARTIES

14. Petitioner, Cristofer Garcia Magadan, is a Mexican national detained at the Otay Mesa Detention Center, in San Diego, California.

15. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security (DHS).

16. Respondent Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement (ICE).

17. Respondent Patrick Divver is the Director of the San Diego Field Office of U.S. Immigration and Customs Enforcement.

18. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention Center.

19. Respondent Sirce Owen is the Acting Director of the Executive Office for Immigration Review (EOIR).

20. Respondent Pamela Bondi is the Attorney General of the United States and the head of the U.S. Department of Justice (DOJ).

21. All Respondents are named in their official capacities.

LEGAL FRAMEWORK

22. The Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1101 et seq., provides multiple detention authorities. For decades, courts, Congress, and agencies have consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. § 1225), which governs applicants for admission encountered at or near the border, and INA § 236 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the United States and placed in removal proceedings. The Supreme Court analyzed the interplay between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

23. Section 1225 provides that, for purposes of initial inspection at the border, "an alien who arrives in the United States or is present in this country but has not been admitted, is treated as an applicant for admission." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (quoting 8

U.S.C. § 1225(a)(1)). The Court explained that decisions concerning who may enter or remain in the United States "generally begin at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible." *Id.* Section 1225(b) governs this inspection and admission process, applying primarily to individuals encountered at or near the border, subjecting them either to expedited removal under § 1225(b)(1)—which includes a credible-fear process for those expressing an intent to seek asylum—or to detention pending a decision on admission under § 1225(b)(2). *Id.* at 297; see also *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020).

24. By contrast, § 1226(a) governs the detention of individuals who entered years ago and were later apprehended in the interior, "pending a decision on whether [they are] to be removed from the United States." *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, § 1226(a) authorizes the Attorney General to detain or release such individuals on bond or conditional parole, except as provided in subsection (c), which applies only to a narrow category of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Congress further described § 1226(a) as merely a "restatement" of prior detention authority under former INA § 242(a), confirming its application to interior arrests pending removal. H.R. Rep. No. 104-469, pt. 1, at 229 (1996).

25. For decades, individuals who entered without inspection but resided in the United States and were later arrested under administrative warrants were consistently treated as subject to § 1226(a)'s discretionary detention framework. This included those who could not lawfully be placed in expedited removal because they had been continuously present in the United States for more than two years, as required by § 1225(b)(1)(A)(iii)(II).

26. Only in 2025 did DHS and the BIA begin advancing a contrary interpretation—asserting that all noncitizens who entered without inspection must be treated as detained under §

1225(b)(2). This abrupt shift departed from decades of agency practice and contradicted settled expectations regarding custody jurisdiction.

27. On July 8, 2025, ICE, "in coordination with the Department of Justice," issued Interim Guidance Regarding Detention Authority for Applicants for Admission. The policy declared that all noncitizens who entered without inspection would henceforth be subject to mandatory detention under § 1225(b)(2)(A), regardless of when or where they were apprehended —even if they had resided in the United States for many years.

28. That same interpretation was recently formalized in *Matter of Yajure Hurtado*, a precedential decision eliminating Immigration Judge jurisdiction to redetermine custody for such individuals.

29. Surprisingly, in January 2025, Congress reaffirmed that 8 U.S.C. § 1226(a), not § 1225(b), governs custody for noncitizens apprehended in the interior. Through the Laken Riley Act of 2025, Congress amended § 1226(c) to add subparagraph (E), extending mandatory detention only to a narrow category of individuals who (i) are inadmissible under § 1182(a)(6)–(7) and (ii) also meet specific criminal-conduct criteria. By creating this limited carve-out, Congress confirmed that § 1226(a) remains the general detention framework for interior arrests, and that mandatory detention applies only to the narrow class defined in new § 1226(c)(E). If, as DHS and the BIA now contend, all such individuals were already subject to mandatory detention under § 1225(b)(2), Congress's amendment would have been superfluous.

EXHAUSTION OF REMEDIES

30. Although 28 U.S.C. § 2241 does not contain an explicit exhaustion requirement, the Ninth Circuit recognizes both statutory and prudential exhaustion doctrines. *Acevedo-Carranza v. Ashcroft*, 371 F.3d 539, 541 (9th Cir. 2004).

31. Prudential exhaustion is generally required when "(1) agency expertise makes agency consideration necessary to generate a proper record and reach a proper decision; (2) relaxation of the requirement would encourage the deliberate bypass of the administrative scheme; and (3) administrative review is likely to allow the agency to correct its own mistakes and to preclude

the need for judicial review." *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir. 2007) (citing *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir. 2003)). Nevertheless, the prudential exhaustion requirement may be waived when "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)).

32. Here, exhaustion is satisfied because there are no remaining administrative remedies available to Petitioner. The Board of Immigration Appeals has already vacated the Immigration Judge's prior decision, rendering the matter final within the agency. Accordingly, there is no further administrative avenue through which Petitioner could seek relief. In any event, even if additional review were theoretically available, exhaustion would be futile because Immigration Judges and the Board are constrained by *Matter of Yajure Hurtado*, which directs classification of interior arrests under § 235(b). Judicial intervention is therefore necessary to prevent continued unlawful detention.

FACTS

33. Petitioner, Cristofer García Magadán, is a citizen and national of Mexico who entered the United States without inspection on or about 2008. He has resided continuously in this country for many years, establishing deep family and community ties.

34. On or about July 16, 2025, agents from Homeland Security Investigations (HSI) initiated an investigation based on information received through a tip line indicating that Petitioner was residing in the United States without lawful status. Acting on this lead, agents conducted surveillance at two addresses in Vista and Encinitas, California.

35. Before executing the arrest, officers of U.S. Immigration and Customs Enforcement obtained and thereafter executed a Form I-200, Warrant for Arrest of Alien, issued pursuant to the Attorney General's arrest authority under INA § 236(a). The warrant authorized Petitioner's arrest at his residence following surveillance confirming his identity. The use of a Form I-200—an administrative warrant reserved for interior enforcement actions against individuals already

present in the United States—demonstrates that DHS itself classified Petitioner's custody under § 236(a), not as that of an 'applicant for admission' under § 235(b). See *Exhibit 1* (Form I-200, Warrant for Arrest of Alien)

36. At approximately 7:30 a.m. on July 16, 2025, agents observed Petitioner leaving his residence in Vista and driving a 2016 Honda Civic. They followed him to Encinitas, where he parked and exited the vehicle. The agents approached, identified themselves, and questioned Petitioner regarding his immigration status. Petitioner acknowledged he did not possess lawful documentation to be in the United States. Agents confirmed his identity and transported him for processing.

37. On the same date, the Department of Homeland Security made an initial custody determination pursuant to INA § 236, as reflected in Form I-286, Notice of Custody Determination, which was served on Petitioner. The form explicitly indicates that Petitioner's detention is governed by § 236, further confirming DHS's initial custody classification under that authority. See *Exhibit 2* (Form I-286, Notice of Custody Determination).

38. Later that day, DHS served Petitioner with a Notice to Appear (Form I-862), thereby initiating removal proceedings before the Otay Mesa Immigration Court.

39. On August 1, 2025, Immigration Judge Mark Sameit, sitting at the Otay Mesa Immigration Court, conducted a bond redetermination hearing. The Department of Homeland Security argued that the Court lacked jurisdiction, asserting that Petitioner was an "applicant for admission" detained under INA § 235(b)(2). After hearing arguments, Judge Sameit determined that jurisdiction lay under § 236(a) and granted release on a $4,500 bond. See *Exhibit 3* (Order of the Immigration Judge).

40. The Department of Homeland Security appealed the Immigration Judge's bond determination to the Board of Immigration Appeals pursuant to 8 C.F.R. § 1003.19(i)(2), which automatically stayed the order pending review.

41. On September 29, 2025, the Board of Immigration Appeals sustained the Department's appeal and vacated the Immigration Judge's bond order, relying on its precedential

decision in *Matter of Yajure Hurtado*. See *Exhibit 4* (Decision of the Board of Immigration Appeals).

42. As a result, Petitioner remains detained without any meaningful opportunity for an individualized bond hearing, despite his long-term residence in the United States, strong family and community ties, and the absence of any evidence suggesting danger to the community or flight risk. Absent relief from this Court, he faces unjustifiable and prolonged immigration custody without ever receiving an individualized determination to justify his continued detention, in violation of the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

CLAIM FOR RELIEF

COUNT 1

Violation of the Immigration and Nationality Act (INA)

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

44. 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 grounds of inadmissibility. It does not extend to individuals who entered and remained in the country beyond the two-year limitation Congress established for expedited removal. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (authorizing expedited removal only for those "who have not been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"). Petitioner has lived in the United States since approximately 2008 and is therefore not lawfully detained under INA § 235(b); to the extent he remains in custody, detention must proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which authorizes release on bond or conditional parole.

45. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully mandates his continued detention in violation of the INA. Section 235(b)(2) applies only to "applicants for admission" encountered at or near the border—not to individuals who, like

Petitioner, entered the United States long ago and were later arrested in the interior. See *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018); *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 113 (2020). By treating Petitioner as an applicant for admission rather than a respondent under INA § 236(a) (8 U.S.C. § 1226(a)), DHS and EOIR have acted contrary to the statutory text, agency precedent, and the limits Congress reaffirmed in the Laken Riley Act of 2025. Recent decisions across this Circuit confirm that individuals arrested in the interior after long-term residence are not "applicants for admission" under § 1225(b). *See, e.g.*, *Mosqueda v. Noem*, No. 25-CV-2304-CAS (BFM), 2025 WL 2591530, at *5 (C.D. Cal. Sept. 8, 2025); *Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *11–16 (D. Nev. Sept. 17, 2025); *Rodriguez v. Noem*, No. 25-CV-2178-JLS-KSC, 2025 WL 2782499, at *1 (S.D. Cal. Sept. 30, 2025); *Guzman v. Andrews*, No. 25-CV-1015-KES-SKO (HC), 2025 WL 2617256, at *4–5 (E.D. Cal. Sept. 9, 2025); *Garcia v. Noem*, No. 25-CV-2110-TWR-KSC, 2025 WL 2549431, at *8 (S.D. Cal. Sept. 3, 2025); Valdovinos v. Noem, No. 25-CV-2439-TWR-KSC, 2025 WL 2637074 (S.D. Cal. Sept. 25, 2025); Esquivel-Ipina v. Noem, No. 25-CV-2672-TWR-KSC, 2025 WL 2723645 (S.D. Cal. Oct. 20, 2025).*

COUNT 2

Violation of the Due Process Clause of the Fifth Amendment

46. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth herein.

47. The Fifth Amendment provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law."

48. "Freedom from imprisonment—from government custody, detention, or other form of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

49. Civil immigration detention is constitutionally permissible only when reasonably related to legitimate governmental objectives, such as preventing flight risk or protecting the community. Here, continued detention achieves neither and, consistent with *Zadvydas v. Davis,*

533 U.S. 678, 690 (2001), has ceased to serve a regulatory purpose and instead has become punitive and violates the Due Process Clause.

50. By detaining Petitioner indefinitely under INA § 235(b) and depriving him of any meaningful opportunity for an individualized bond redetermination hearing before a neutral decisionmaker—where the Government must prove by clear and convincing evidence that detention remains necessary—Respondents have violated Petitioner's rights under the Due Process Clause of the Fifth Amendment.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

A) Assume jurisdiction over this matter;

B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this District while these proceedings are pending;

C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring Respondents to explain the legal basis for Petitioner's continued detention;

D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent Petitioner remains in custody, such detention must proceed under INA § 236(a).

E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his continued detention violates the Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment.

F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner, or, in the alternative, to provide a constitutionally adequate bond hearing before a neutral decisionmaker at which the Government must justify Petitioner's continued detention by clear and convincing evidence that he poses a flight risk or danger to the community.

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

Respectfully submitted,

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