

1 Alejandro Monsalve
2 CA SBN 324958
3 Alex Monsalve Law Firm, PC
4 240 Woodlawn Ave., Suite 9
5 Chula Vista, CA 91910
6 (619) 777-6796
7 Counsel for Petitioner

8
9
10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 **MATEO CONTRERAS-ALBINO**

13 Case No.: **'25CV2965 BAS BLM**

14 Petitioner

15 v.

16 **Kristi NOEM**, Secretary, U.S. Department of
17 Homeland Security;
18 **Todd LYONS**, Acting Director, U.S.
19 Immigration and Customs Enforcement;
20 **Patrick DIVVER**, Field Office Director, San
21 Diego Field Office, U.S. Immigration and
22 Customs Enforcement.
23 **Christopher LAROSE**, Senior Warden, Otay
24 Mesa Detention Center;
25 **Sirce OWEN**, Acting Director of the Executive
26 Office for Immigration Review (EOIR),
27 U.S. Department of Justice.
28 **Pamela BONDI**, Attorney General, U.S.
Department of Justice.
Respondents

Agency File No: A 

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

INTRODUCTION

1 2. Petitioner, Mateo Contreras-Albino, is a Mexican national who entered the United
2 States on or around 2000. He is currently in DHS custody at the Otay Mesa Detention Center. In
3 the records of the Immigration Court (EOIR), Petitioner's second last name appears misspelled
4 as "Avino."

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

11 3. The newly adopted interpretation bars noncitizens like Petitioner from seeking release
12 on bond under INA § 236 (8 U.S.C. § 1226) and the procedures provided in 8 C.F.R. §§
13 1003.19(a), 1236.1(d).

14 4. On July 29, 2025, Immigration Judge Amelia Anderson, sitting at the Otay Mesa
15 Immigration Court, conducted a bond redetermination hearing. The Department argued that the
16 Court lacked jurisdiction, asserting that Petitioner was an "applicant for admission" detained
17 under INA § 235(b)(2). Through his custody redetermination counsel, Petitioner opposed that
18 interpretation and argued that his detention arose under INA § 236(a). After reviewing the record
19 and hearing arguments, the Immigration Judge found that Petitioner had been arrested in the
20 interior, rather than while arriving at the border, and therefore concluded that jurisdiction
21 properly lay under § 236(a). The Court granted release on a \$3,000 bond, and the Department
22 reserved appeal. See *Exhibit 1* (Bond Memorandum of the Immigration Judge).

23 5. On October 17, 2025, the Board of Immigration Appeals vacated the Immigration
24 Judge's decision based exclusively on the *Matter of Yajure-Hurtado* rationale. See *Exhibit 2*
25 (BIA Decision Vacating Bond Order).

6. Because the Board of Immigration Appeals has already sustained the Department's appeal based on its own precedent in *Matter of Yajure-Hurtado*, any further administrative review would be futile.

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 release on the \$3,000 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, Mateo Contreras-Albino, 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

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

9 24. By contrast, § 1226(a) governs the detention of individuals who entered years ago and
10 were later apprehended in the interior, “pending a decision on whether [they are] to be removed
11 from the United States.” *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §
12 1226(a) authorizes the Attorney General to detain or release such individuals on bond or
13 conditional parole, except as provided in subsection (c), which applies only to a narrow category
14 of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made
15 pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding
16 regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8
17 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
18 Congress further described § 1226(a) as merely a “restatement” of prior detention authority
19 under former INA § 242(a), confirming its application to interior arrests pending removal. H.R.
20 Rep. No. 104-469, pt. 1, at 229 (1996).

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

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

1 1225(b)(2). This abrupt shift departed from decades of agency practice and contradicted settled
2 expectations regarding custody jurisdiction.

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

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

11 29. Surprisingly, in January 2025, Congress reaffirmed that 8 U.S.C. § 1226(a), not §
12 1225(b), governs custody for noncitizens apprehended in the interior. Through the Laken Riley
13 Act of 2025, Congress amended § 1226(c) to add subparagraph (E), extending mandatory
14 detention only to a narrow category of individuals who (i) are inadmissible under § 1182(a)(6)—
15 (7) and (ii) also meet specific criminal-conduct criteria. By creating this limited carve-out,
16 Congress confirmed that § 1226(a) remains the general detention framework for interior arrests,
17 and that mandatory detention applies only to the narrow class defined in new § 1226(c)(E). If, as
18 DHS and the BIA now contend, all such individuals were already subject to mandatory detention
19 under § 1225(b)(2), Congress’s amendment would have been superfluous.

20 FACTS

21 30. Petitioner is a Mexican national who has lived in the United States since
22 approximately 2000, after entering without inspection at a non-designated port of entry.

23 31. Petitioner has deep and longstanding ties to his community.

24 32. Petitioner is the father of three U.S.-born children, one of whom is only four years old
25 and has been diagnosed with autism.

26 33. Petitioner is *prima facie* eligible for Cancellation of Removal under INA § 240A(b).

34. On July 8, 2025, while driving a white truck away from a local Home Depot store with his U.S.-born son, Petitioner was abruptly stopped by Immigration and Customs Enforcement (ICE) officers, who barricaded his vehicle between two government cars in the middle of the street. The officers forced both Petitioner and his 22-year-old U.S.-born son out of the vehicle and placed them under arrest, even though the son clearly stated that he was a U.S. citizen born in the United States. Petitioner's son was later released, but Petitioner has remained in DHS custody since that date.

35. Petitioner was thereafter served with a Notice to Appear, and removal proceedings were initiated against him before the Otay Mesa Immigration Court.

36. On July 29, 2025, Immigration Judge Amelia Anderson, sitting at the Otay Mesa Immigration Court, conducted a bond redetermination hearing. The Department argued that the Court lacked jurisdiction, asserting that Petitioner was an “applicant for admission” detained under INA § 235(b)(2). Through his custody redetermination counsel, Petitioner opposed that interpretation and argued that his detention arose under INA § 236(a). After reviewing the record and hearing arguments, the Immigration Judge found that Petitioner had been arrested in the interior, rather than while arriving at the border, and therefore concluded that jurisdiction properly lay under § 236(a). The Court granted release on a \$3,000 bond, and the Department reserved appeal. See *Exhibit 1* (Bond Memorandum of the Immigration Judge).

37. On September 5, 2025, the Board of Immigration Appeals issued its precedential decision in *Matter of Yajure Hurtado*. The Board held that all noncitizens who entered without inspection are “applicants for admission” under INA § 235, regardless of how long ago they entered or their family and community ties.

38. The decision eliminated Immigration Judge jurisdiction to conduct custody redeterminations for such individuals.

39. On October 17, 2025, the Board of Immigration Appeals vacated the Immigration Judge's decision based exclusively on the *Matter of Yajure-Hurtado* rationale. See *Exhibit 2* (BIA Decision Vacating Bond Order).

40. Because the Board of Immigration Appeals has already sustained the Department's appeal based on its own precedent in *Matter of Yajure-Hurtado*, any further administrative appeal would be futile, and exhaustion should therefore be excused.

41. Absent relief from this Court, Petitioner faces the prospect of unjustifiable and unreasonable prolonged immigration custody without ever receiving an individualized hearing to justify his detention, in violation of the INA and the Due Process Clause.

CLAIM FOR RELIEF

COUNT 1

Violation of the Immigration and Nationality Act (INA)

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

43. 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 2000 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.

44. 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

1 INA § 236(a) (8 U.S.C. § 1226(a)), DHS and EOIR have acted contrary to the statutory text,
2 agency precedent, and the limits Congress reaffirmed in the Laken Riley Act of 2025.

3 **COUNT 2**

4 **Violation of the Due Process Clause of the Fifth Amendment**

5 45. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
6 herein.

7 46. The Fifth Amendment provides that “[n]o person shall be deprived of life, liberty, or
8 property, without due process of law.”

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

12 48. Civil immigration detention is constitutionally permissible only when reasonably
13 related to legitimate governmental objectives, such as preventing flight risk or protecting the
14 community. Here, continued detention achieves neither and, consistent with *Zadvydas v. Davis*,
15 533 U.S. 678, 690 (2001), has ceased to serve a regulatory purpose and instead has become
16 punitive and violates the Due Process Clause.

17 49. By detaining Petitioner indefinitely under INA § 235(b) pursuant to the Board’s new
18 interpretation in *Matter of Yajure-Hurtado*, which nullified a bond previously granted after an
19 individualized redetermination hearing, Respondents have effectively deprived Petitioner of the
20 liberty interest recognized under INA § 236(a) and violated his rights under the Due Process
21 Clause of the Fifth Amendment.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Petitioner respectfully requests that this Court:

24 A) Assume jurisdiction over this matter;
25 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
26 District while these proceedings are pending;

1 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
2 Respondents to explain the legal basis for Petitioner's continued detention;
3 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent
4 Petitioner remains in custody, such detention must proceed under INA § 236(a).
5 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his
6 continued detention violates the Immigration and Nationality Act and the Due Process Clause of
7 the Fifth Amendment.
8 F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner on the \$3,000 bond
9 previously authorized by the Immigration Judge, or, in the alternative, to conduct a new,
10 constitutionally adequate bond hearing before a neutral decisionmaker at which the Government
11 must justify Petitioner's continued detention by clear and convincing evidence.
12 G) Grant such other and further relief as the Court deems just and proper.

13 Respectfully submitted,

14 /s/ Alejandro J. Monsalve, Esq. CA SBN 324958

15 Alex Monsalve Law Firm, PC

16 240 Woodlawn Ave, Suite 9

17 Chula Vista, CA 91910

18 Phone: (619) 777-6796

19 Email: info@alexmonsavelawfirm.com

20 Counsel for Petitioner

21 Dated: November 1, 2025