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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARICELA MARTINEZ-MARTINEZ

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.: '25CV2975 GPC VET

Agency File No: A[redacted]

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

INTRODUCTION

1. Petitioner, Maricela Martinez-Martinez, is a Mexican national who has lived in the U.S. for almost twenty years, 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).

4. Because the Board of Immigration Appeals itself issued *Matter of Yajure-Hurtado*, any request for custody redetermination, or any subsequent administrative appeal, would be futile. Exhaustion should therefore be excused in this case. See *Singh v. Napolitano*, 649 F.3d 899, 900 (9th Cir. 2011) (holding that exhaustion is excused where the administrative remedy is unavailable or futile).

5. 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.

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

7. Petitioner seeks a writ of habeas corpus ordering her release, or alternatively, a constitutionally adequate bond hearing before a neutral decisionmaker, where 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

8. 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 she challenges the legality of that custody.

9. 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.

10. 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.

11. 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

12. Petitioner, Maricela Martinez-Martinez, is a Mexican national detained at the Otay Mesa Detention Center, in San Diego, California.

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

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

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

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

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

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

19. All Respondents are named in their official capacities.

LEGAL FRAMEWORK

20. 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).

21. 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).

22. 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).

23. For decades, individuals who entered without inspection but resided in the United States and were later arrested in the interior 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).

24. 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.

25. 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.

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

27. 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.

FACTS

28. Petitioner is a Mexican national who has lived in the United States for almost twenty years, after entering without inspection at a non-designated location around 2006.

29. Petitioner has deep and longstanding ties to her community.

30. Petitioner is the mother of two U.S.-born minor children.

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

32. Petitioner has no criminal record.

33. On or around July 14, 2025, Petitioner was arrested by ICE officers while she was at the driveway of her place of residence, peacefully washing a car.

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

35. 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.

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

37. Because the BIA itself issued *Yajure-Hurtado*, requesting a bond hearing in immigration court or any subsequent appeal would be futile, and exhaustion should therefore be excused in this case.

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

CLAIM FOR RELIEF

COUNT 1

Violation of the Immigration and Nationality Act (INA)

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

40. 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 2006—almost twenty years—and is therefore not lawfully detained under INA § 235(b); to the extent she remains in custody, detention must proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which authorizes release on bond or conditional parole.

41. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully mandates her 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.

COUNT 2

Violation of the Due Process Clause of the Fifth Amendment

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

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

44. "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).

45. 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.

46. By detaining Petitioner indefinitely under INA § 235(b) and depriving her 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 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, her 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 immediately from custody, or, in the alternative, order a constitutionally adequate bond hearing before a neutral decisionmaker at which the Government must justify her continued detention by clear and convincing evidence;

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

Respectfully submitted,

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