

Pablo Martinez-Hernandez/ A 

Name and Prisoner Number/Alien Reg

Otero Processing Center

Place of Confinement

26 McGregor Range Road

Mailing Address

Chaparral, NM 88081

City, State, Zip Code

(Failure to notify the Court of a change of address may result in dismissal of this action.)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Pablo Martinez-Hernandez

(Full Name of Petitioner)

Petitioner,

v.

Todd Lyons, Acting Director of U.S. Immigration Customs and Enforcement; Mary De Anda-Ybarra, Field Office Director for Enforcement and Removal Operations (ERO); Dora Castro, Warden of Otero, Pam Bondi, U.S. Attorney General, Kristi Noem, Secretary of U.S. Department of Homeland Security, in their official capacities,

(Name of Warden, Jailor or authorized person having custody of Petitioner)

No. CV

(To be supplied by the Clerk)

AMENDED PETITION

Respondent(s).

PETITION UNDER 28 U.S.C. § 2241 FOR A WRIT OF HABEAS CORPUS

- 1. What are you challenging in this petition? [checked] Immigration detention [] Bureau of Prisons sentence calculation or loss of good-time credits [] Probation, parole or supervised release [] State Pre-trial detention [] Other (explain):

- 2. (a) Name and location of the agency or court that made the decision you are challenging: (b) Case or opinion number: (c) Decision made by the agency or court: (d) Date of the decision:

- 3. Did you appeal the decision to a higher agency or court? Yes [] No [] If yes, answer the following:

(a) First appeal:

- (1) Name of the agency or court: _____
- (2) Date you filed: _____
- (3) Opinion or case number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(b) Second appeal:

- (1) Name of the agency or court: _____
- (2) Date you filed: _____
- (3) Opinion or case number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(c) Third appeal:

- (1) Name of the agency or court: _____
- (2) Date you filed: _____
- (3) Opinion or case number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

4. If you did not appeal this decision to a higher agency or court, explain why you did not:

The Petitioner is challenging his categorization as an "applicant for admission" under INA 235 per DHS's July 8, 2025 guidance and Board of Immigration Appeals precedent decision of Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025). Requesting a bond with the Immigration Judge and an appeal with the Board of Immigration Appeals would be futile. There is no decision to appeal. The habeas petition is the only feasible route to relief for Petitioner.

5. Other than the appeals listed above, have you filed any other petitions, applications or motions concerning the issues raised in this petition? Yes No

If yes, answer the following:

(a) Name of the Agency or court: _____

(b) Date you filed: _____

(c) Opinion or case number: _____

(d) Result: _____

(e) Date of result: _____

(f) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

6. For this petition, **state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States.** Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) any available administrative or judicial remedies on each ground on which you requested action by the federal court.

GROUND ONE: Unlawful Detention under 8 U.S.C. Section 1225; Custody Properly Government by 8 U.S.C. Section 1226 (Misapplication of Mandatory Detention Statute).

GROUND TWO: Violation of Fifth Amendment Due Process Clause (Substantive and Procedural)

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner's classification by DHS under INA 235 and Matter of Yajure-Hurtado deprives him of the due process
protections found in INA 236. It would defy logic that Petitioner who has lived in the United States for over 30 years
would have no due process rights.

(b) Did you exhaust all available administrative or judicial remedies relating to Ground Two?

Yes No

(c) If yes, did you present the issue to:

- The Board of Immigration Appeals
- The Office of General Counsel
- The Parole Commission
- The State Court
- Other: _____

(d) If you did not exhaust all available remedies relating to Ground Two, explain why:

As explained in ground one, there is no decision to appeal. Under DHS guidance and Matter of Yajure-Hurtado, Petitioner is

- The Office of General Counsel
- The Parole Commission
- The State Court
- Other: _____

(d) If you did not exhaust all available remedies relating to Ground Four, explain why: _____

Please answer these additional questions about this petition:

7. Are you challenging your conviction or sentence in any of the grounds raised above?
 Yes No

(Claims challenging a federal conviction or sentence may only be raised in a motion under 28 U.S.C. § 2255, unless remedies under § 2255 are legally inadequate or ineffective. Claims challenging a state conviction or sentence must be raised in a petition for writ of habeas corpus under 28 U.S.C. § 2254.)

If yes, answer the following:

(a) Have you filed -- a motion under 28 U.S.C. § 2255? Yes No
 -- a petition under 28 U.S.C. § 2254? Yes No

If yes, answer the following:

- (1) Name of court: _____
- (2) Case number: _____
- (3) Opinion or case number: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

(b) Explain why the remedy under § 2255 is inadequate or ineffective: _____

8. If this petition concerns immigration detention or removal proceedings, answer the following:

(a) Date you were taken into immigration custody: 09/16/2025

(b) Date of removal or reinstatement order: N/A

(c) Did you file an appeal with the Board of Immigration Appeals? Yes No

(1) Date you filed: _____

(2) Case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

9. If this petition concerns your confinement by the State of New Mexico, answer the following:

(a) Date you were arrested/detained: _____

(b) Charge(s) brought: _____

(c) Projected date of your trial: _____

(d) Are you represented by counsel? Yes No

(e) Have you raised your claims in the State Court? Yes No

(1) Name of Court: _____

(2) Date you filed: _____

(3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

Attach, if available, a copy of any brief filed on your behalf and a copy of the decision.

10. Petitioner asks that the Court grant the following relief: 1) Assume jurisdiction over this matter; 2) Direct Respondents

to immediately set bond hearing under INA 236(a); 2) Order that the Immigration Judge has jurisdiction under 236(a) and bond request
cannot be denied on lack of jurisdiction grounds; and 3) Grant any other relief the Court deems just and proper.

or any other relief to which Petitioner may be entitled. (Money damages are not available in habeas corpus cases.)

I declare under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 11/05/2025 (month, day, year).


Signature of Petitioner


Signature of attorney, if any

11/05/2025
Date