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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

**JUAN CARLOS APARICIO SANCHEZ**

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.: '25CV3068 JLS MMP

Agency File No: 

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

1 **INTRODUCTION**

2 1. Petitioner, Juan Carlos Aparicio Sanchez, is a Mexican national who has lived in the  
3 United States since 2005 and is currently in DHS custody at the Otay Mesa Detention Center.

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

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

13 4. Because the Board of Immigration Appeals itself issued *Matter of Yajure-Hurtado*, 29  
14 I&N Dec. 216 (BIA 2025), any request for custody redetermination, or any subsequent  
15 administrative appeal, would be futile. Exhaustion should therefore be excused in this case. See  
16 *Singh v. Napolitano*, 649 F.3d 899, 900 (9th Cir. 2011) (holding that exhaustion is excused  
17 where the administrative remedy is unavailable or futile).

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

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

22 7. Petitioner seeks a writ of habeas corpus ordering his release, or alternatively, a  
23 constitutionally adequate bond hearing before a neutral decisionmaker, where the Government  
24 must prove by clear and convincing evidence that continued detention is warranted under the  
25 Due Process Clause of the Fifth Amendment.

1 **JURISDICTION AND VENUE**

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

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

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

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

16 **PARTIES**

17 12. Petitioner, Juan Carlos Aparicio Sanchez, is a Mexican national detained at the Otay  
18 Mesa Detention Center, in San Diego, California.

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

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

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

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

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

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

5 19. All Respondents are named in their official capacities.

### 6 LEGAL FRAMEWORK

7 20. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq.,  
8 provides multiple detention authorities. For decades, courts, Congress, and agencies have  
9 consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. §  
10 1225), which governs applicants for admission encountered at or near the border, and INA § 236  
11 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the  
12 United States and placed in removal proceedings. The Supreme Court analyzed the interplay  
13 between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

14 21. Section 1225 provides that, for purposes of initial inspection at the border, “an alien  
15 who arrives in the United States or is present in this country but has not been admitted, is treated  
16 as an applicant for admission.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (quoting 8  
17 U.S.C. § 1225(a)(1)). The Court explained that decisions concerning who may enter or remain in  
18 the United States “generally begin at the Nation’s borders and ports of entry, where the  
19 Government must determine whether an alien seeking to enter the country is admissible.” *Id.*  
20 Section 1225(b) governs this inspection and admission process, applying primarily to individuals  
21 encountered at or near the border, subjecting them either to expedited removal under § 1225(b)  
22 (1)—which includes a credible-fear process for those expressing an intent to seek asylum—or to  
23 detention pending a decision on admission under § 1225(b)(2). *Id.* at 297; see also *Dep’t of*  
24 *Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020).

25 22. By contrast, § 1226(a) governs the detention of individuals who entered years ago and  
26 were later apprehended in the interior, “pending a decision on whether [they are] to be removed  
27 from the United States.” *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §

1 1226(a) authorizes the Attorney General to detain or release such individuals on bond or  
2 conditional parole, except as provided in subsection (c), which applies only to a narrow category  
3 of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made  
4 pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding  
5 regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8  
6 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).  
7 Congress further described § 1226(a) as merely a “restatement” of prior detention authority  
8 under former INA § 242(a), confirming its application to interior arrests pending removal. H.R.  
9 Rep. No. 104-469, pt. 1, at 229 (1996).

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

15 24. Only in 2025 did DHS and the BIA begin advancing a contrary interpretation—  
16 asserting that all noncitizens who entered without inspection must be treated as detained under §  
17 1225(b)(2). This abrupt shift departed from decades of agency practice and contradicted settled  
18 expectations regarding custody jurisdiction.

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

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

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

10 **FACTS**

11 28. Petitioner is a Mexican national who has lived in the United States since 2005, after  
12 entering without inspection.

13 29. Petitioner has deep and longstanding ties to his community.

14 30. Petitioner has two U.S.-born daughters, and his wife is a lawful permanent resident.

15 31. Petitioner is *prima facie* eligible for cancellation of removal.

16 32. On or around October 24, 2025, Petitioner was arrested by ICE officers near his  
17 house as he was driving to work.

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

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

24 35. The decision eliminated Immigration Judge jurisdiction to conduct custody  
25 redeterminations for such individuals.

26 36. Because the BIA itself issued *Yajure-Hurtado*, any request for custody  
27 redetermination or further appeal would be futile, and exhaustion should therefore be excused.

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

4 **CLAIM FOR RELIEF**

5 **COUNT 1**

6 **Violation of the Immigration and Nationality Act (INA)**

7 38. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
8 paragraphs.

9 39. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
10 noncitizens residing in the United States who are subject to grounds of inadmissibility. It does  
11 not extend to individuals who entered and remained in the country beyond the two-year  
12 limitation Congress established for expedited removal. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II)  
13 (authorizing expedited removal only for those “who have not been physically present in the  
14 United States continuously for the 2-year period immediately prior to the date of the  
15 determination of inadmissibility”). Petitioner has lived in the United States since 2005—  
16 approximately twenty years.—and is therefore not lawfully detained under INA § 235(b); to the  
17 extent he remains in custody, detention must proceed under INA § 236(a) (8 U.S.C. § 1226(a)),  
18 which authorizes release on bond or conditional parole.

19 40. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully  
20 mandates his continued detention in violation of the INA. Section 235(b)(2) applies only to  
21 “applicants for admission” encountered at or near the border—not to individuals who, like  
22 Petitioner, entered the United States long ago and were later arrested in the interior. See *Jennings*  
23 *v. Rodriguez*, 583 U.S. 281, 297 (2018); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103,  
24 113 (2020). By treating Petitioner as an applicant for admission rather than a respondent under  
25 INA § 236(a) (8 U.S.C. § 1226(a)), DHS and EOIR have acted contrary to the statutory text,  
26 agency precedent, and the limits Congress reaffirmed in the Laken Riley Act of 2025.

1 **COUNT 2**

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

3 41. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth  
4 herein.

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

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

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

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner respectfully requests that this Court:

- 17 A) Assume jurisdiction over this matter;
- 18 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this  
19 District while these proceedings are pending;
- 20 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring  
21 Respondents to explain the legal basis for Petitioner’s continued detention;
- 22 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent  
23 Petitioner remains in custody, such detention must proceed under INA § 236(a).
- 24 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his  
25 continued detention violates the Immigration and Nationality Act and the Due Process Clause of  
26 the Fifth Amendment.

1 F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from  
2 custody, or, in the alternative, order a constitutionally adequate bond hearing before a neutral  
3 decisionmaker at which the Government must justify his continued detention by clear and  
4 convincing evidence;

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

6 Respectfully submitted,

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

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14 Dated: November 10, 2025

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