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

RAMIRO PEREZ-VELAZQUEZ

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.: '25CV3073 CAB 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, Ramiro Perez-Velazquez, is a Mexican national who has lived in the United
3 States for more than thirty years and is currently in DHS custody at the Otay Mesa Detention
4 Center.

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 September 26, 2025, Immigration Judge Rene Mateo, sitting at the Miami Krome
15 Immigration Court, denied Petitioner’s request for bond, citing as the reason for denial “No
16 jurisdiction. See *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025)”. See *Exhibit 1* (Bond
17 Order).

18 5. Because the BIA itself issued *Matter of Yajure-Hurtado*, any further appeal would be
19 futile. Exhaustion should therefore be excused in this case. See *Singh v. Napolitano*, 649 F.3d
20 899, 900 (9th Cir. 2011).

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

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

25 8. Petitioner seeks a writ of habeas corpus ordering his release, or alternatively, a
26 constitutionally adequate bond hearing before a neutral decisionmaker, where the Government
27

1 must prove by clear and convincing evidence that continued detention is warranted under the
2 Due Process Clause of the Fifth Amendment.

3 **JURISDICTION AND VENUE**

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

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

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

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

18 **PARTIES**

19 13. Petitioner, Ramiro Perez-Velazquez, is a Mexican national detained at the Otay Mesa
20 Detention Center in San Diego, California.

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

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

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

1 17. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention
2 Center.

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

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

7 20. All Respondents are named in their official capacities.

8 **LEGAL FRAMEWORK**

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

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

1 23. By contrast, § 1226(a) governs the detention of individuals who entered years ago and
2 were later apprehended in the interior, “pending a decision on whether [they are] to be removed
3 from the United States.” *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §
4 1226(a) authorizes the Attorney General to detain or release such individuals on bond or
5 conditional parole, except as provided in subsection (c), which applies only to a narrow category
6 of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made
7 pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding
8 regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8
9 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
10 Congress further described § 1226(a) as merely a “restatement” of prior detention authority
11 under former INA § 242(a), confirming its application to interior arrests pending removal. H.R.
12 Rep. No. 104-469, pt. 1, at 229 (1996).

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

18 25. Only in 2025 did DHS and the BIA begin advancing a contrary interpretation—
19 asserting that all noncitizens who entered without inspection must be treated as detained under §
20 1225(b)(2). This abrupt shift departed from decades of agency practice and contradicted settled
21 expectations regarding custody jurisdiction.

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

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

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

13 **FACTS**

14 29. Petitioner is a Mexican national who has lived in the United States for more than
15 thirty years, after entering without inspection at a non-designated location around 1990.

16 30. Petitioner has deep and longstanding ties to his community.

17 31. Petitioner is the father of five U.S.-born children, three under the age of 21.

18 32. Petitioner is *prima facie eligible* for cancellation of removal.

19 33. On or around September 15, 2025, Petitioner was arrested by ICE officers in Florida,
20 where he was initially detained before being transferred to the Otay Mesa Detention Center in
21 San Diego, California, where he remains in DHS custody.

22 34. Petitioner was thereafter served with a Notice to Appear, and removal proceedings
23 were initially commenced before the Miami Krome Immigration Court. His case was later
24 transferred to the Otay Mesa Immigration Court, where proceedings are currently pending.

25 35. On September 5, 2025, the Board of Immigration Appeals issued its precedential
26 decision in *Matter of Yajure-Hurtado*. The Board held that all noncitizens who entered without
27

1 inspection are “applicants for admission” under INA § 235, regardless of how long ago they
2 entered or their family and community ties.

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

5 37. On September 26, 2025, Immigration Judge Rene Mateo, sitting at the Miami Krome
6 Immigration Court, denied Petitioner’s request for bond, citing as the reason for denial “No
7 jurisdiction. See *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025)”. See *Exhibit 1*.

8 38. Because the BIA itself issued *Matter of Yajure-Hurtado*, any further appeal would be
9 futile. Exhaustion should therefore be excused in this case. See *Singh v. Napolitano*, 649 F.3d
10 899, 900 (9th Cir. 2011) (holding that exhaustion is excused where the administrative remedy is
11 unavailable or futile).

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

15 **CLAIM FOR RELIEF**

16 **COUNT 1**

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

18 40. Petitioner incorporates by reference the allegations of fact set forth in the preceding
19 paragraphs.

20 41. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
21 noncitizens residing in the United States who are subject to grounds of inadmissibility. It does
22 not extend to individuals who entered and remained in the country beyond the two-year
23 limitation Congress established for expedited removal. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II)
24 (authorizing expedited removal only for those “who have not been physically present in the
25 United States continuously for the 2-year period immediately prior to the date of the
26 determination of inadmissibility”). Petitioner has lived in the United States since 1990—more
27 than thirty years—and is therefore not lawfully detained under INA § 235(b); to the extent he

1 remains in custody, detention must proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which
2 authorizes release on bond or conditional parole.

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

11 **COUNT 2**

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

13 43. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
14 herein.

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

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

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

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Petitioner respectfully requests that this Court:

27 A) Assume jurisdiction over this matter;

- 1 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
2 District while these proceedings are pending;
- 3 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
4 Respondents to explain the legal basis for Petitioner’s continued detention;
- 5 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent
6 Petitioner remains in custody, such detention must proceed under INA § 236(a).
- 7 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his
8 continued detention violates the Immigration and Nationality Act and the Due Process Clause of
9 the Fifth Amendment.
- 10 F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from
11 custody, or, in the alternative, order a constitutionally adequate bond hearing before a neutral
12 decisionmaker at which the Government must justify his continued detention by clear and
13 convincing evidence;
- 14 G) Grant such other and further relief as the Court deems just and proper.

15 Respectfully submitted,

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

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22 Counsel for Petitioner

23 Dated: November 10, 2025