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

MANUEL RAMIREZ-RIVERA

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.: '25CV3072 RBM DEB

Agency File No:



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

1 **INTRODUCTION**

2 1. Petitioner, Manuel Ramirez-Rivera, is a Mexican national who has lived in the United
3 States for two decades, 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. On August 4, 2025, the Immigration Judge at Otay Mesa granted Petitioner’s release
14 on a \$6,500 bond, finding jurisdiction under INA § 236(a).

15 5. Subsequently, the Department of Homeland Security appealed the Immigration Judge’s
16 August 1, 2025 bond order. That appeal remains pending before the Board of Immigration
17 Appeals.

18 6. Since the Board of Immigration Appeals itself issued *Matter of Yajure-Hurtado*, any
19 further appeal would be reviewed by that same body, rendering exhaustion futile. See *Singh v.*
20 *Napolitano*, 649 F.3d 899, 900 (9th Cir. 2011) .

21 7. 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 8. 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 9. Petitioner seeks a writ of habeas corpus ordering his release on the \$6,500 bond
26 previously authorized by the Immigration Judge or, alternatively, a constitutionally adequate
27 bond hearing before a neutral decisionmaker, where the Government must prove by clear and

1 convincing evidence that continued detention is warranted under the Due Process Clause of the
2 Fifth Amendment.

3 **JURISDICTION AND VENUE**

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

7 11. 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 12. 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 13. 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 14. Petitioner, Manuel Ramirez-Rivera, is a Mexican national detained at the Otay Mesa
20 Detention Center, in San Diego, California.

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

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

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

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

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

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

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

8 **LEGAL FRAMEWORK**

9 22. 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 23. 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 24. 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
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 25. 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 26. 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 27. 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 28. 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 29. 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 30. Petitioner is a Mexican national who has lived in the United States since
15 approximately 2005, after entering without inspection at a non-designated port of entry.

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

17 32. On June 29, 2025, while working at a carwash, Petitioner was arrested by officers of
18 U.S. Immigration and Customs Enforcement (ICE).

19 33. He has remained in DHS custody since that date.

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

22 35. On August 1, 2025, Immigration Judge Mark Sameit, sitting at the Otay Mesa
23 Immigration Court, conducted a bond redetermination hearing. After reviewing the record and
24 hearing arguments, the Immigration Judge found that Petitioner had been arrested in the interior,
25 rather than while arriving at the border, and therefore concluded that jurisdiction properly lay
26 under INA § 236(a). The Court granted release upon posting of a \$6,500 bond, and the
27 Department reserved appeal. See *Exhibit 1* (Bond Order of the Immigration Judge).

1 36. Subsequently, the Department of Homeland Security appealed the Immigration
2 Judge’s August 1, 2025 bond order. That appeal remains pending before the Board of
3 Immigration Appeals.

4 37. On September 5, 2025, the Board of Immigration Appeals issued its precedential
5 decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), holding that all noncitizens
6 who entered without inspection are “applicants for admission” under INA § 235, regardless of
7 how long ago they entered or their family and community ties.

8 38. Since any appeal would be reviewed by the same Board of Immigration Appeals that
9 authored *Yajure-Hurtado*, further administrative appeal would be futile, and exhaustion should
10 therefore be excused.

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

14 **CLAIM FOR RELIEF**

15 **COUNT 1**

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

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

19 41. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all
20 noncitizens residing in the United States who are subject to grounds of inadmissibility. It does
21 not extend to individuals who entered and remained in the country beyond the two-year
22 limitation Congress established for expedited removal. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II)
23 (authorizing expedited removal only for those “who have not been physically present in the
24 United States continuously for the 2-year period immediately prior to the date of the
25 determination of inadmissibility”). Petitioner has lived in the United States since 2005 and is
26 therefore not lawfully detained under INA § 235(b); to the extent he remains in custody,

1 detention must proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which authorizes release on
2 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. Civil immigration detention is constitutionally permissible only when reasonably
21 related to legitimate governmental objectives, such as preventing flight risk or protecting the
22 community. Here, continued detention achieves neither and, consistent with *Zadvydas v. Davis*,
23 533 U.S. 678, 690 (2001), has ceased to serve a regulatory purpose and instead has become
24 punitive and violates the Due Process Clause.

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioner respectfully requests that this Court:

3 A) Assume jurisdiction over this matter;

4 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
5 District while these proceedings are pending;

6 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
7 Respondents to explain the legal basis for Petitioner’s continued detention;

8 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent
9 Petitioner remains in custody, such detention must proceed under INA § 236(a).

10 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his
11 continued detention violates the Immigration and Nationality Act and the Due Process Clause of
12 the Fifth Amendment.

13 F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner on the \$6,500 bond
14 previously authorized by the Immigration Judge, or, in the alternative, to conduct a new,
15 constitutionally adequate bond hearing before a neutral decisionmaker at which the Government
16 must justify Petitioner’s continued detention by clear and convincing evidence.

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

18 Respectfully submitted,

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

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25 Counsel for Petitioner

26 Dated: November 10, 2025