

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

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**25cv3112-JES-DDL**

OSCAR CORTEZ-HERNANDEZ,

Agency No. 079-154-897,



v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, et. al.,

*Respondents.*

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**PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION**

OSCAR CORTEZ-HERNANDEZ, )

Petitioner, )

v. )

Kristi NOEM, in her official capacity as Secretary )  
of Homeland Security, Christopher J. LAROSE, )  
in his official capacity as Warden of Otay Mesa )  
Detention Center, Gregory J. ARCHAMBEAULT, )  
in his official capacity as San Diego Field Office )  
Director, ICE Enforcement Removal Operations; )  
Todd LYONS, in his official capacity as Acting Director )  
of ICE; and Pamela BONDI, U.S. )  
Attorney General; IMMIGRATION AND )  
CUSTOMS ENFORCEMENT; DEPARTMENT OF )  
HOMELAND SECURITY, )

Respondents. )

**25cv3112-JES-DDL**

**PETITION FOR WRIT  
OF HABEAS CORPUS**



**I. INTRODUCTION**

1. Petitioner OSCAR CORTEZ-HERNANDEZ (“Petitioner”) is a 40-year-old Mexican national who last entered the United States in 2002. He has resided in northern San Diego County for twenty-three years. He has two United States Citizen children.

2. On September 29, 2025, an Immigration Judge (“IJ”) denied

1 Petitioner’s request for a custody redetermination, finding the court lacked  
2 jurisdiction to redetermine Petitioner’s custody because he was detained under  
3 INA § 235(b)(2)(A).

4 3. On October 15, 2025, Petitioner appealed the decision of the  
5 Immigration Judge, which remains pending with Board of Immigration Appeals  
6 (“BIA”). Petitioner remains confined at Otay Mesa Detention Center in San  
7 Diego, California.

8  
9 4. Petitioner therefore seeks a writ of habeas corpus directing his  
10 immediate release.  
11

## 12 II. VENUE AND JURISDICTION

13  
14 5. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus),  
15 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the Constitution  
16 (Suspension Clause), as Petitioner is presently in custody under the authority  
17 of the United States and challenging his detention as in violation of the  
18 Constitution, laws, or treaties of the United States.  
19

20 6. The federal district courts have jurisdiction under Section 2241 to  
21 hear habeas claims by individuals challenging the lawfulness of their detention  
22 by ICE. *See Jennings v. Rodriguez*, 583 U.S. 281, 290-92 (2018).  
23

24 7. Venue is proper because Petitioner is detained in the Otay Mesa  
25 Detention Center, within the San Diego Division, and Respondent LaRose is his  
26 immediate custodian. *See* 28 U.S.C. §§ 2241(d), 1391(e).  
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### III. PARTIES

8. Petitioner is a 40-year-old Mexican national who resides in Oceanside, California. He is currently detained by Respondents at the Otay Mesa Detention Center in San Diego, California, pending removal proceedings.

9. Respondent Christopher J. LaRose is the Warden of Otay Mesa Detention Center. Respondent La Rose is responsible for the operation of the Detention Center where Petitioner is detained. As such, Respondent LaRose has immediate physical custody of the Petitioner. He is being sued in his official capacity.

10. Respondent Gregory J. Archambeault is the San Diego Field Office Director (“FOD”) for ICE Enforcement and Removal Operations. Respondent Archambeault is responsible for the oversight of ICE operations at the Otay Mesa Detention Center. Respondent Archambeault is being sued in his official capacity.

11. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for the administration of ICE and the implementation and enforcement of the immigration laws, including immigrant detention. As such, Respondent Lyons is a legal custodian of Petitioner and is being sued in his official capacity.

12. Respondent Kristi Noem is the Secretary of the Department of Homeland Security (“DHS”). As Secretary of DHS, Secretary Noem is responsible for the general administration and enforcement of the immigration

1 laws of the United States. Respondent Secretary Noem is being sued in her  
2 official capacity.


3  
4 **IV. EXHAUSTION OF REMEDIES**

5  
6 13. No statutory exhaustion requirement applies. *See* 8 § U.S.C. 2241;  
7 *Laing v. Ashcroft*, 370 F.3d 994, 998 (9th Cir. 2004). Therefore, exhaustion is not  
8 jurisdictionally required.

9  
10 14. Additionally, further agency steps will be futile. Recently, the BIA  
11 published *Matter of Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025). In its decision,  
12 the BIA adopted DHS' reading of 8 U.S.C. § 1225(b)(2), finding individuals  
13 similarly situated to Petitioner ineligible for release on bond.

14  
15 15. Thus, dismissal of Petitioner's bond appeal by the BIA is inevitable,  
16 and any further pursuit of administrative remedies would be futile. Therefore,  
17 Petitioner has exhausted his administrative remedies to the extent required  
18 by law, and his only remedy is by way of this judicial action.

19  
20 **V. STATEMENT OF FACTS**

21 16. Petitioner is a Mexican national born on  He first  
22 entered the United States in 2002. Since his last entry into the United States,  
23 he has lived continuously in the northern portion of San Diego County.

24  
25 17. On or about August 26, 2025, Petitioner was apprehended by ICE  
26 agents after he parked his vehicle at a shopping center. Respondents arrested  
27

1 and detained Petitioner.

2 18. On the same day, DHS issued Form I-286, Notice of Custody  
3 Determination, indicating that Petitioner was being detained “Pursuant to the  
4 authority contained in section 236 of the Immigration and Nationality Act and  
5 part 236 of title 8, Code of Federal Regulations...pending a final administrative  
6 determination in [his] case.” Petitioner has remained in Respondents’ custody  
7 since that time.  
8

9 19. On September 23, 2025, Petitioner requested a custody  
10 redetermination hearing before the IJ. On September 30, 2025, IJ denied  
11 Petitioner’s request after finding Petitioner was being detained under INA §  
12 235(b)(2)(A). IJ agreed with the Government’s assertion that Petitioner was  
13 subject to mandatory detention and cited *Matter of Yajure Hurtado*, 29 I&N  
14 Dec. 216 (BIA 2025).  
15

16 20. On October 15, 2025, Petitioner filed an appeal of the IJ’s bond order  
17 with the BIA. Petitioner’s detention continues.  
18

19 21. Petitioner’s next master-calendar hearing is scheduled on December  
20 11, 2025, at 1:00 p.m. before Immigration Judge Eugene H. Robinson Jr. at  
21 7488 Calzada de la Fuente, San Diego, California.  
22

23 22. Petitioner now seeks habeas relief because continued his detention  
24 without at minimum a full custody determination hearing exceeds statutory  
25 authority and violates the Fifth Amendment.  
26  
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1           26. Before the Immigration Court, Respondents contended that  
2           Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2), which mandates the  
3           detention of an “applicant for admission” throughout the entirety of removal  
4           proceedings.

5           27. Respondents’ newly formulated definition of “applicant for  
6           admission,” which would include any noncitizen who has not been formally  
7           admitted regardless of years of residence in the United States, directly  
8           contradicts both the plain text of the statute and controlling Ninth Circuit  
9           precedent.  
10          28. As the Ninth Circuit explained in interpreting the phrase “applicant  
11          for admission” under § 1225(b)(1), “*an immigrant submits an ‘application for  
12          admission’ at a distinct point in time,*” and stretching that phrase to apply  
13          “*potentially for years or decades ... would push the statutory text beyond its  
14          breaking point.*” *United States v. Gambino-Ruiz*, 91 F.4th 981, 988–89 (9th Cir.  
15          2024) (citing *Torres v. Barr*, 976 F.3d 918, 922–26 (9th Cir. 2020) (en banc)).  
16          29. Because Petitioner has resided continuously in the United States  
17          since 2002, his period as an “applicant for admission” has long since closed.  
18          30. Numerous courts across the United States have considered this issue  
19          subsequent to Respondents’ new policy of treating the vast majority of  
20          immigrants in their custody as being detained pursuant to 8 U.S.C. §  
21          1225(b)(2) and the BIA’s decision supporting this interpretation in *Matter of*  
22          *Yajure Hurtado*, 28 I&N Dec. 216 (BIA 2025).  
23          24          25          26          27          28



1 a danger to the community. Likewise, the risk of erroneous deprivation of  
2 liberty is great due to the lack of a non-independent adjudicator. *Marcello v.*  
3 *Bonds*, 39 U.S. 302, 305-306 (1955). In filing Form EOIR-43, ICE is acting as  
4 both the prosecutor as well as the adjudicator.

5  
6 36. While the government has discretion to detain individuals under 8  
7 U.S.C. § 1226(a) and to revoke custody decisions under 8 U.S.C. § 1226(b), this  
8 discretion is not “unlimited” and must comport with constitutional due process.  
9 *See Zadvydas*, 533 U.S. at 698.

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11  
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Petitioner prays that this Court grant the following relief:

- 14 1) Assume jurisdiction over this matter;
- 15 2) Grant Petitioner a writ of habeas corpus directing the Respondents to  
16 immediately release him from custody, under reasonable conditions of  
17 supervision;
- 18 3) Order Respondents to refrain from transferring Petitioner out of the  
19 jurisdiction of this court during the pendency of these proceedings and while  
20 the Petitioner remains in Respondents’ custody;
- 21 4) Order Respondents to file a response within 3 business days of the filing of  
22 this petition;
- 23 5) Award attorneys’ fees to Petitioner; and
- 24 6) Grant any other and further relief which this Court deems just and proper.
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1 I affirm, under penalty of perjury, that the foregoing is true and correct.

2

3 Respectfully submitted this 11th day of November, 2025.

4

5 /s/ Murray D. Hilts  
6 The Law Offices of Murray D. Hilts  
7 3020 Meade Ave.  
8 San Diego, CA 92116  
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10 *Attorney for Petitioner*

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