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

12 **JONATAN REYES-MEDINA,**

13 Petitioner,

14 vs.

15 **CHRISTOPHER J. LAROSE, SENIOR**
16 **WARDEN, OTAY MESA DETENTION CENTER,**
17 **UNITED STATES IMMIGRATION AND CUSTOMS**
18 **ENFORCEMENT; KRISTI NOEM, SECRETARY,**
19 **UNITED STATES DEPARTMENT OF HOMELAND**
20 **SECURITY; PAMELA BONDI, UNITED STATES**
21 **ATTORNEY GENERAL; TODD LYONS, ACTING**
22 **DIRECTOR, IMMIGRATION AND CUSTOMS**
23 **ENFORCEMENT; GREGORY J.**
24 **ARCHAMBEAULT, DIRECTOR, SAN DIEGO**
25 **FIELD OFFICE, IMMIGRATION AND CUSTOMS**
26 **ENFORCEMENT AND REMOVAL OPERATIONS,**
27 **U.S. DEPARTMENT OF HOMELAND SECURITY,**

28 Respondents.

CASE NO. '25CV3129 BJC DDL

**PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C.
§ 2241**

AGENCY NO. 

INTRODUCTION

1. **Petitioner Jonatan Reyes-Medina (Mr. Reyes) is in the physical custody
of Respondents at the Otay Mesa Detention Center (OMDC) in San Diego,
California, where he is being unlawfully detained.**

PETITION FOR WRIT OF HABEAS CORPUS

1 **2. The Department of Homeland Security (DHS) and the Executive Office**
2 **for Immigration Review (EOIR) have improperly kept Mr. Reyes detained,**
3 **contending that his detention is lawful under 8 C.F.R. § 1003.19(i)(2), which**
4 **stays release on bond where Respondents appealed the July 25, 2025 bond**
5 **grant of \$3,500.00 with condition expressly decided by an Immigration Judge**
6 **(IJ) holding that despite the Respondents’ sudden and unannounced change in**
7 **policy of on or about early July 2025 contending that IJs no longer had**
8 **jurisdiction to hear bond requests where a noncitizen had entered the country**
9 **without inspection (regardless of how long ago), and then where the Board of**
10 **Immigration Appeals (BIA) remanded the matter back to the IJ (for**
11 **factfinding on the specific issues of Mr. Reyes’s “manner of entry” into the**
12 **United States and the IJ’s jurisdiction to redetermine the DHS’s custody**
13 **determination) in light of its September 5, 2025 decision in the Matter of**
14 **Yajure Hurtado, 29 I&N Dec. 216 (BIA 2025), wherein it sided with the**
15 **Respondents by improperly holding while his case was pending on appeal that**
16 **noncitizens who are present (regardless of the length of time) in the United**
17 **States without admission are subject to 8 U.S.C. § 1225(b)(2)(A) instead of 8**
18 **U.S.C. § 1226(a), and subsequently the IJ, at a hearing on remand on October**
19 **31, 2025, thereby (over Mr. Reyes’s objections), relying on such BIA decision,**
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1 found that Mr. Reyes had “entered without inspection” and concluded that he
2 no longer had jurisdiction to entertain Mr. Reyes’s bond request and
3 therefore reversed his initial decision. By holding Mr. Reyes in this
4 unwarranted manner, Respondents have effectively concluded that Mr. Reyes,
5 a law-abiding (no criminal record), hardworking (electrician), tax-paying,
6 church-going, long-time continuous resident (over 20 years) of San Diego
7 County, California in the United States and family-supporting head of
8 household who is married to Jennifer Garcia (a United States citizen born in
9 San Diego, California) and has two children ([REDACTED] age 19, a college student,
10 and [REDACTED] age 14, a high school student in a pre-med program born in San
11 Diego, California) as a result of such union, should be deemed to be seeking
12 admission to the United States and therefore subject to mandatory detention
13 during the removal hearing process pursuant to 8 U.S.C. § 1225(b)(2)(A).

14 Decades of case law, legislation, and agency interpretation support Mr.
15 Reyes’s contention that he is subject to the 8 U.S.C. § 1226(a) discretionary
16 (i.e., non-mandatory) detention –and that under such discretionary standard,
17 he should be released immediately under a bond of \$3,500.00 with condition
18 as initially ordered by the IJ.

19 **3. Neither of the Respondents’ aforementioned reasons warrant Mr.**

1 **Reyes’s continued detention. First, Courts have found that the automatic stay**
2 **provision, 8 C.F.R. § 1003.19(i)(2), violates the Fifth Amendment because it**
3 **undermines the presumption of liberty and deprives noncitizens of an**
4 **individualized review of their custody determination. See, e.g., Anicasio v.**
5 **Kramer, 2025 WL 2374224 (D. Neb. Aug. 14, 2025). Second, the DHS’s policy**
6 **of claiming noncitizens apprehended and detained within the United States**
7 **are subject to § 1225 mandatory detention is blatantly contradictory to years**
8 **of case law, DHS and Immigration and Customs Enforcement (ICE) practices,**
9 **legislative interpretation, and the plain statutory language of the Immigration**
10 **and Nationality Act (INA). For every day that Respondents continue to detain**
11 **Mr. Reyes, they are violating his constitutional and statutory rights. For the**
12 **reasons argued below, this Court should grant Mr. Reyes’s writ and release**
13 **him immediately in accordance with the IJ’s initial determination.**

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19 **JURISDICTION**

20 **4. This Court has subject matter jurisdiction over this matter pursuant to**
21 **28 U.S.C. § 2241 (Habeas Corpus), 28 U.S.C. § 1651 (All Writs Act), and 28**
22 **U.S.C. § 1331 (Federal Question). This Court also has jurisdiction pursuant to**
23 **Article I, Section 9, clause 2 of the United States Constitution (the Suspension**
24 **Clause); see INS v. St. Cyr., 533 U.S. 289, 300 (2001).**

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27 **5. This Court may grant relief pursuant to 28 U.S.C. §§ 2241 and 2243, the**

1 The Declaratory Judgment Act, 28 U.S.C. §§ 2201, et seq., the All Writs Act,
2 28 U.S.C. § 1651, the Fifth Amendment, Fed. R. Civ. P. 65 (Injunctive Relief),
3 and 5 U.S.C. §§ 500, et seq., the Administrative Procedure Act (APA).
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5 **VENUE**

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7 **6. Venue is proper in the Southern District of California pursuant to 28**
8 **U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of**
9 **the United States, and because a substantial part of the events or omissions**
10 **giving rise to the claims occurred in the Southern District of California.**
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12 **7. Furthermore, pursuant to Braden v. 30th Judicial Circuit Court of**
13 **Kentucky, 410 U.S. 484, 493-500 (1973), venue lies in the United States District**
14 **Court for the Southern District of California, the judicial district in which**
15 **Mr. Reyes is currently detained.**
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18 **PARTIES**

19 **(Petitioner)**

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21 **8. Mr. Reyes was detained by Immigration and Customs Enforcement**
22 **(ICE) agents on July 8, 2025, on the street in front of his home while walking**
23 **to his car on his way to work in San Diego, California. On the same day, the**
24 **DHS issued and served him with a Notice to Appear which categorized him as**
25 **being “an alien present in the United States who has not been admitted or**
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1 paroled” [and not as an “arriving alien”] and charged him as removable as
2 such pursuant to INA § 212(a)(6)(A)(i) (8U.S.C. § 1182(a)(6)(A)(i)), thus
3 consistent with his allegedly being in the class of deportable aliens who are
4 deemed “Inadmissible At Time Of Entry” under INA § 237(a)(1) (8 U.S.C. §
5 1227(a)(1)) for being “Present In Violation Of Law” (formerly titled “Entered
6 Without Inspection”) under INA 237(a)(1)(B) (in effect a delayed exclusion
7 but nevertheless under a deportation proceeding) without having been
8 “admitted or paroled” and not as an “arriving alien” thereby subjecting him
9 to removal proceedings under 8 U.S.C. 1229a(c)(3) as a matter of deportation
10 and not exclusion.¹ He has been in immigration detention at OMDC in San
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17 ¹ In such removal proceedings (in the nature of deportation
18 rather than exclusion proceedings) the government bears the
19 burden of proof of establishing a respondent’s alienage, 8
20 U.S.C. § 1229a(c) (3) (A), by “clear, unequivocal, and convincing
21 evidence,” Woodby v. [INS], 385 U.S. 276 (1966); moreover, note
22 should also be taken that “if the DHS correctly [sic]
23 categorized the respondent as an arriving alien,” rather than a
24 deportable alien, the noncitizen “would have had the burden of
25 proof instead of the DHS” [compare Immigration and Naturalization
26 Service (INS) Form I-221 (Order to Show Cause and Notice of
27 Hearing for deportation cases) with INS Form I-122 (Notice To
28 Applicant For Admission Detained For Hearing Before [IJ] for
exclusion cases, located at Gordon and Rosenfeld, 1 IMMIGRATION
LAW AND PROCEDURE, Chap. 1, §§ 10.8a (7) and (27), respectively,
(Matthew Bender 1985), used prior to the merging thereof into
one Form, the DHS Form I-862 (Notice to Appear) (used to charge
the respondent herein), as required under the Illegal
Immigration Reform and Immigrant Responsibility Act of 1996

1 **Diego, California since shortly after being apprehended. He is married to a**
2 **United States citizen. He and his wife have two children, ages 19 and 14, who**
3 **are United States citizens. He has resided in and called the United States his**
4 **home for over 20 years.**

6
7 **(Respondents)**

8 **9. Respondent Christopher J. LaRose is the Senior Warden of OMDC in**
9 **San Diego, California, where Mr. Reyes is being detained.**

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11 **10. Respondent Kristi Noem is the Secretary of the Department of**
12 **Homeland Security. She is responsible for the implementation and**
13 **enforcement of the Immigration and Nationality Act (INA) and oversees ICE,**
14 **which is responsible for Mr. Reyes's detention.**

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16 **11. Respondent Pamela Bondi is the Attorney General of the United States.**
17 **She is responsible for the Department of Justice, of which the Executive Office**
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24 **(IIRIRA), PL104-208, div. c; 110 Stat. 3009, 2009-46 to 724**
25 **(Sept. 30, 1996), removal proc., effective 4-1-97]; "but because**
26 **the DHS incorrectly [sic] classified the noncitizen, the IJ**
27 **placed the burden of proof on the DHS," see Matter of Mejia-**
28 **Flores, 2007 BIA LEXIS 48, at *2 (BIA Jan. 29, 2007) as noted in**
Gordon, Mailman, Yale-Loehr & Wada, 5 IMMIGRATION LAW AND
PROCEDURE § 64.03[2][c] n. 71, p. 64-22 (LexisNexis 2025).

1 for Immigration Review and the immigration court system it operates is a
2 component agency.

3
4 **12. Respondent Todd Lyons is the Acting Director of Immigration and**
5 **Customs Enforcement, a federal law enforcement agency within the**
6 **Department of Homeland Security. ICE's responsibilities include operating**
7 **the immigration detention system. In his capacity as ICE Acting Director,**
8 **Respondent Lyons exercises control over and is a custodian of persons held at**
9 **ICE facilities nationally.**

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12 **13. Respondent Gregory J. Archambeault is the Field Office Director for**
13 **the San Diego office of ICE. OMDC is located within the jurisdiction of the**
14 **ICE San Diego Field Office, which has legal authority over all individuals in**
15 **ICE custody there.**

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18 **14. All foregoing respondents are named and sued in their official**
19 **capacities.**

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21 **15. Respondent United States Department of Homeland Security (DHS) is**
22 **the federal agency responsible for implementing and enforcing the INA,**
23 **including the detention and removal of noncitizens.**

1 **16. Respondent United States Immigration and Customs Enforcement**
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3 **(ICE) is the agency within DHS responsible for implementing and enforcing**
4 **the INA, including the detention and removal of noncitizens.**

5 **17. One or more of the foregoing respondents is Mr. Reyes’s immediate**
6 **custodian and possesses ultimate authority over his custody.**

8 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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10 **18. This case clearly falls within several of the exceptions to the statutory**
11 **requirement of the exhaustion of administrative remedies for judicial review**
12 **set forth in the INA under 8 U.S.C. § 1252(d)(1) & (2) and in the APA under**
13 **§ 10(c), 5 U.S.C. § 704, including (a) (i) the inadequacy or futility of the**
14 **remedy below since the BIA has predetermined the issues being appealed in**
15 **light of its decision in the Matter of Yajure Hurtado and its order remanding**
16 **this case to the IJ and (ii) the BIA’s unreasonable delay in rendering a**
17 **decision below functions as a de facto determination, see McCarthy v.**
18 **Madigan, 503 U.S. 140 (1992), (iii) in the meantime Mr. Reyes and his family**
19 **members are being irreparably harmed, (b) Mr. Reyes raises questions of the**
20 **constitutionality regarding § 1003.19(i)(2) and the DHS’s procedure and**
21 **practice thereunder, Mejia v. Gonzales., 499 F.3d 991, 997 (9th Cir. 2007), and**
22 **the BIA lacks adjudicatory power to resolve such claims, Xiao v. Barr, 979**
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1 F.2d 151, 154 (9th Cir. 1992) (“[i]f the agency lacks authority to resolve the
2 constitutional claims, there is little point to requiring exhaustion”), (c) the
3 DHS lacks authority and is clearly acting *ultra vires*, American-Arab Anti-
4 Discrimination Committee v. Reno, 70 F.3d 1045 (9th Cir. 1995), and (d) the
5 DHS’s exercise of authority, through its regulatory practices, is clearly at odds
6 with its statutory mandate, Espinoza-Gutierrez v. Smith, 94 F.3d 1270 (9th
7 Cir. 1996) (reasoning that because agency was required to follow its own
8 rules, plaintiff need not raise argument at agency that agency regulations
9 conflicted with its enabling statute, because it would fall “on deaf ears”).
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13 LEGAL FRAMEWORK

14 (Law and Procedure Governing This Habeas Petition)

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16 19. The United States Constitution guarantees that the writ of habeas
17 corpus is “available to every individual detained within the United States.”
18 Hamdi v. Rumsfeld, 542 U.S. 507, 525 (2004) (citing U.S. Const., Art. I, § 9, cl.
19 2). This includes immigration-related detention. Zadvydas v. Davis, 533 U.S.
20 678, 687 (2001).
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23 20. The “historic purpose of the writ” of habeas corpus is “to relieve
24 detention by executive authorities without judicial trial.” Zadvydas, 533 U.S.
25 at 699 (cleaned up).
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1 allowed.” 28 U.S.C. § 2243. “The court shall summarily hear and determine
2 the facts, and dispose of the matter as law and justice require.” Id.

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4 (Relevant Statutes, Regulations and Holdings)

5 25. By appealing the IJ’s rightful decision to grant Mr. Reyes’s release on a
6 bond in the amount of \$3,500.00 with condition, and thus deploying the
7 automatic stay provision of 8 C.F.R. § 1003.19(i)(2)² to continue hold Mr.
8 Reyes, Respondents have effectively taken the position that Mr. Reyes, despite
9 being a continuous resident of the United States since on or about August
10 2005, should be deemed to be seeking admission to the United States and
11 therefore subject to mandatory detention during the removal hearing process
12 pursuant to 8 U.S.C. § 1225(b)(2)(A). Crucially, bond is unavailable to those
13 detained under § 1225, while the Attorney General may grant bond to a §
14 1226 detainee. Compare 8 U.S.C. § 1225(b)(2) (“shall be detained”) with 8
15 U.S.C. § 1226(a)(2) (“may release the alien”).

16 26. Section 1226(a) applied to anyone who is detained “pending a decision
17 on whether the alien is to be removed from the United States.” 8 U.S.C. §
18 1226(a). Section 1226 confirms that this authority includes not just noncitizens
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22 ² In certain cases, 8 C.F.R. § 1003.19(i)(2) provides for an
23 automatic stay “upon DHS’s filing of a notice of intent to
24 appeal the custody redetermination (DHS Form EOIR-43) with the
25 Immigration Court within one business day of the order, and,
26 except as otherwise provided in 8 C.F.R.1003.6(c), shall remain
27 in abeyance pending decision of the appeal by the Board.” In
28 turn, 8 C.F.R. 1003.6(c)(1) provides that “[t]he stay shall
lapse if DHS fails to file a notice of appeal with the Board
within ten business days of the issuance of the order of the
immigration judge.”

1 who are deportable pursuant to 8 U.S.C. § 1227(a), but also noncitizens who
2 are inadmissible pursuant to 8 U.S.C. § 1182(a). 8 U.S.C. § 1226(c). In
3 contrast, § 1225 is concerned “primarily [with] aliens seeking entry,” i.e.,
4 cases “at the Nation’s borders and ports of entry, where the Government must
5 determine whether an alien seeking to enter the country is admissible.”
6 Jennings v. Rodriguez, 583 U.S. 281, 287, 297 (2018). “Courts have repeatedly
7 held that § 1225 applied to arriving aliens, while § 1226 governs detention of
8 ‘aliens already in the country.’” Anicasio, 2025 WL 2374224, at *2 (quoting
9 Jennings, 583 U.S. at 281); see also Torres v. Barr, 976 F.3d 918, 922 (9th Cir.
10 2020); United States v. Gambino-Ruiz, 91 F.4th 981, 986 (9th Cir. 2024); Padilla
11 -Ramirez v. Bible, 882 F.3d 826, 829 (9th Cir. 2017).

12
13 27. Despite the clear statutory language and the weight of precedential
14 rulings, the BIA issued a decision on September 5, 2025 in a drastic departure
15 from longstanding and inviolate case law in Matter of Yajure Hurtado, 29
16 I&N Dec. 216 (BIA 2025), in which it improperly held that noncitizens who
17 are present in the United States without admission are subject to 8 U.S.C. §
18 1225(b)(2)(A).

19 28. However, other Ninth Circuit Courts, including this specific district,
20 have discredited the Hurtado decision and have held that this use of
21 mandatory detention provisions is improper and violates detainees’ due
22 process rights. See, e.g., Garcia v. Noem, 2025 WL 2549431 (S.D. Cal. Sept. 3,
23 2025), Silva v. LaRose, No. 25-CV-2329-JES-KSC, 2025 WL 2770639, at *3
24 (S.D. Cal. Sept. 29, 2025).

25 29. Detention under all sections of the INA must comport with the Fifth
26 Amendment’s Due Process Clause, which “applies to all ‘persons’ within the
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1 United States, including aliens, whether their presence is lawful, unlawful,
2 temporary, or permanent.” Zavydas, 533 U.S. at 693; see also Demore v. Kim,
3 538 U.S. 510, 523 (2003). To comport with substantive due process,
4 immigration detention must “bear [a] reasonable relation to the purpose for
5 which the individual [was] committed.” Zadvydas, 533 U.S. at 690.

6 30. Mr. Reyes’s continued detention violates his Fifth Amendment
7 substantive and procedural due process rights.

8 31. For nearly fifty years, the standard to determine a violation of
9 procedural due process requires the balancing of three factors: (1) “the
10 private interests that will be affected by the official action”; (2) “the risk of an
11 erroneous deprivation of such interests through the procedures used, and the
12 probable value, if any, of additional or substitute procedural safeguards”; and
13 (3) “the Government’s interest, including the function involved and the fiscal
14 and administrative burdens that the additional or substitute procedural
15 requirement would entail”. Mathews v. Eldridge, 424 U.S. 319, 355 (1976).
16 The Ninth Circuit has held that “[u]ltimately, Mathews remains a flexible test
17 that can and must account for the heightened governmental interest in the
18 immigration detention context.” Rodriguez Diaz v. Garland, 53 F.4th 1189,
19 1206 (9th Cir. 2022).

20 32. A substantive due process violation results whenever a court has
21 determined that detention has become unreasonably prolonged due to a
22 number of factors. Kydyrali v. Wolf, 499 F.Supp.3d 768 (S.D. Cal. 2020). Such
23 factors are “(1) total length of detention to date; (2) likely duration of future
24 detention; (3) conditions of detention; (4) delays in the removal proceedings
25 caused by the detainee; (5) delays in the removal proceedings caused by the
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1 government; and (6) the likelihood that the removal proceedings will result in
2 a final order of removal.” Id.

3 33. Additionally, the Supreme Court of the United States has intentionally
4 left open a detainee’s ability to challenge conditions of confinement under a
5 habeas petition. Ziglar v. Abbasi, 582 U.S. 120, 144 (2017). The more that the
6 conditions of civil detention begin to approximate those of criminal detention,
7 the more likely that conditions of confinement are a constitutional violation.
8 Doe v. Becerra, 732 F.Supp.3d 1071 (N.D. Cal. 2024).

9 34. Further, this Court has the authority to invalidate agency actions
10 beyond delegated authority as *ultra vires*. See Romero v. INS, 39 F.3d 977, 980
11 (9th Cir. 1994). Congress has permitted the Attorney General to delegate
12 detention determinations to “any other officer, employee, or agency of the
13 Department of Justice.” 28 U.S.C. § 510. Immigration Judges are
14 administrative law judges within the DOJ and are thus properly delegated
15 bond-determination authority, whereas DHS is not. See 8 U.S.C. § 1101(b)(4).
16 As such, DHS, by overriding the discretionary authority exercised by the IJ to
17 grant Mr. Reyes’s release and thus invoking the automatic stay provision can
18 be (and should be) invalidated as plainly *ultra vires*.

19 35. Lastly, under the APA, “final agency action for which there is no other
20 adequate remedy in a court [is] subject to judicial review.” 5 U.S.C. § 704. The
21 reviewing Court “shall . . . hold unlawful and set aside agency action, findings,
22 and conclusions found to be . . . arbitrary, capricious, an abuse of discretion,
23 or otherwise not in accordance with law,” or “unsupported by substantial
24 evidence.” 5 U.S.C. § 706(2)(A), (E).

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FACTUAL AND PROCEDURAL HISTORY

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2 **36. Mr. Reyes is a 37-year-old gentleman who has resided in San Diego,**
3 **California for over 20 years. During such time, Mr. Reyes has never had a**
4 **criminal history—his record is impeccable and he is an upstanding member of**
5 **his community.**

6 **37. Mr. Reyes has worked for the past seven years for [REDACTED] as**
7 **an electrician, has an annual income of approximately [REDACTED] and has an**
8 **Internal Revenue Service Individual Taxpayer Identification Number (ITIN)**
9 **and duly pays his taxes and other governmental obligations through his**
10 **employer including those required by the Social Security Administration. He**
11 **is the primary source of support for his family, including his wife and their**
12 **two children, all of whom are citizens of the United States. Needless to say,**
13 **without his presence and contribution as head of the household his family**
14 **members are struggling socially, emotionally and psychologically and**
15 **financially, respectively, reducing their standard of living well below the**
16 **poverty level for a family of four.**

17
18 **38. On the morning of July 8, 2025, while Mr. Reyes was walking on the**
19 **street in front of his home on his way to work, he was approached and**
20 **apprehended by ICE agents.**

21 **39. On the same day, the DHS issued and served on him a Notice to**
22 **Appear which categorized him as being “an alien present in the United States**
23 **who has not been admitted or paroled” (and not as an “arriving alien”) and**
24 **charged him as removable as such pursuant to INA § 212(a)(6)(A)(i), thus**
25 **consistent with his allegedly being up-front in the class of “deportable” aliens**
26 **(and not with being up-front in the class of “inadmissible” aliens) who are**
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1 deemed “Inadmissible At Time Of Entry” under INA § 237(a)(1) for being
2 “Present In Violation Of Law” (formerly titled “Entered Without
3 Inspection”) under INA 237(a)(1)(B). Additionally, he was served inter alia
4 with a DHS Notice of Custody Determination informing him he was being
5 detained pursuant to the authority contained in INA § 236 and part 236 of 8
6 C.F.R. and that he could request a review of such custody determination by
7 an IJ.

8 40. He was then taken to the OMDC and has remained there in DHS
9 custody to date.

10 41. Mr. Reyes requested a bond redetermination hearing which took place
11 on July 25, 2025, before an IJ who found (a) that he had subject matter
12 jurisdiction to hear such request despite the DHS’s contention under its
13 sudden and unannounced policy that he did not because Mr. Reyes had
14 “entered without inspection” and was therefore subject to mandatory
15 detention under INA § 235, and (b) that Mr. Reyes had met his burden of
16 establishing he “did not pose a danger to the community” and that despite
17 presenting a “slight flight risk” he possessed various factors in mitigation
18 thereof which were cured by his order that he be released by posting a bond in
19 the amount of \$3,500.00 with condition. Note also should be taken that the
20 DHS failed to produce any evidence that Mr. Reyes had “entered without
21 inspection” inasmuch as its submission of it’s the July 8, 2025 DHS Form I-
22 213 (Record of Deportable/Inadmissible Alien) left blank the boxes thereof
23 titled “Status of Entry” and “Status When Found” and merely stated that it
24 was “determined that Reyes does not have any legal documents to be present
25 in the United States (US) legally.” Furthermore, it should further be noted
26

1 that Mr. Reyes was present at the hearing but was not called to testify by the
2 DHS.

3 42. On the same day, despite the IJ's reasoned decision based on all the
4 evidence presented by the parties on the question of whether Mr. Reyes
5 should be released on bond and whether he had jurisdiction to order his
6 release, the DHS filed a DHS EOIR-43 (Notice of ICE Intent to Appeal
7 Custody Redetermination) thereby automatically staying the IJ's order and
8 preventing Mr. Reyes from posting the bond.

9 43. On September 5, 2025, the BIA issued its decision in the Matter of
10 Yajure Hurtado wherein it adopted the DHS's position uniformly stripping
11 Immigration Courts of subject matter jurisdiction to hear bond requests
12 where noncitizens had "entered without inspection" regardless of the length of
13 time they had resided inside the country.

14 44. On October 16, 2025, after Mr. Reyes had filed his appellate brief
15 wherein he raised in relevant part the constitutional issues set forth in this
16 petition, the BIA issued its order stating (without addressing such
17 constitutional issues) that in light of its holding in Matter of Yajure Hurtado
18 during the pendency of the appeal "remand [was] required for the [IJ] to
19 make factual findings regarding [Mr. Reyes's] manner of entry . . . and . . . to
20 further consider whether he had jurisdiction over [Mr. Reyes's] request for
21 custody redetermination."

22 45. On October 31, 2025, the IJ conducted a hearing on the remand
23 wherein he in effect vacated his previous bond order and denied Mr. Reyes's
24 bond request as he found (a) that, based on evidence that was available to the
25 DHS at the first bond hearing (i.e., Mr. Reyes's in-court testimony) but had
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1 not been then been introduced by the DHS, (i) Mr. Reyes had “entered
2 without inspection,” (ii) Mr. Reyes was thus an “arriving noncitizen” and (iii)
3 the IJ therefore lacked jurisdiction to redetermine the DHS’s bond custody
4 determination. The IJ did so notwithstanding Mr. Reyes’s contentions (a) that
5 it was the DHS’s burden to establish the manner of Mr. Reyes’s entry with
6 evidence available to it at the time of the initial bond hearing but that it chose
7 not to produce it thereby waiving such issue and rendering it moot, and (b)
8 that pursuant to Montgomery Ward & Co. v. FTC (“Montgomery Ward”),
9 691 F.2d 1322 (9th Cir. 1982), see Matter of Fernando Cordero-Garcia, 27
10 I&N Dec. 652 (BIA 2019), the Matter of Yajure Hurtado is not retroactive in
11 the case herein inasmuch as consideration of the following five factors as set
12 forth in the Montgomery Ward test shows that the weight thereof lies heavily
13 in favor of Mr. Reyes, to wit: (1) it is indisputable that the Matter of Yajure
14 Hurtado is a case of first impression, (2) it represents an abrupt departure
15 from a long-standing, well-established practice, (3) Mr. Reyes and those
16 similarly situated to him had been relying on such well-established practice
17 especially in light of the DHS’s NTA not having categorized him as an
18 “arriving alien” and the DHS’s Notice of Disposition of Custody having
19 informed him of his right to a bond re-determination before an IJ, (4) it
20 imposes an obvious social, psychological, emotional and financial burden on
21 Mr. Reyes and his family members, and (5) the non-retroactivity of such
22 matter supports the statutory scheme of providing bonds to noncitizen
23 persons such as Mr. Reyes.
24

1 46. Mr. Reyes has 30 days from the October 31, 2025 IJ decision denying his
2 request for bond redetermination after remand in which to file a Notice of
3 Appeal before the BIA. See 8 C.F.R. §§ 236.1(d)(3)(i), 1003.19(f) and 1003.38.

4 47. Mr. Reyes has now been detained for over four months in OMDC and
5 he hopes to secure his release through the instant petition so that he may get
6 back to being present with and supporting his family members and to
7 prosecute his applications for relief from removal in the form of (a)
8 cancellation of removal for certain non-permanent residents under INA
9 §240A(b)(1),³ (b) protection under the United Nations Convention Against
10 Torture (UNCAT) as implemented by § 2242 of Title XXII of the Dept. of
11 Transportation and Related Agencies Appropriation Act of 1999, P.L. 105-277
12 until the Mexican government can offer him protection,⁴ and (c) post-
13

14
15
16 ³ Mr. Reyes is eligible therefor inasmuch as he has been
17 continuously present in this country for over 10 years, he is a
18 person of good moral character and his removal would result in
19 exceptional and extremely unusual hardship to his qualifying
20 family members, his wife and 2 children.

21 ⁴ Mr. Reyes hereby respectfully requests that the Court take
22 judicial notice that the State Department reports that Mexico is
23 a country which is presently experiencing a high level of
24 lawlessness involving the likelihood of persecution and torture
25 (threats, intimidation, arrests, interrogations, extortions,
26 grave and serious bodily harm, including death, kidnappings and
27 the like) of its citizens and migrants at the hands of organized
28 criminal groups and their cohorts within the government that
makes it impossible for its government to provide them
protection such that (a) the administration of President Donald
J. Trump has designated 6 Mexican cartels as Foreign Terrorist
Organizations; (b) President Trump has stated that such cartels
have a "tremendous grip" on Mexico and its politicians such that
"Mexican authorities are petrified to show up at their office,
to go to work" in light of the cartels' nefarious practice of

PETITION FOR WRIT OF HABEAS CORPUS

1 conclusion voluntary departure under INA 240B(b); moreover, it should be
2 noted that he is now eligible to have his wife file an I-130 Petition for Alien
3 Relative on his behalf with the United States Citizenship and Immigration
4 Service (USCIS) in order to start the process of legalizing his status.

5 **FIRST CLAIM FOR RELIEF**
6 **Violation of 8 U.S.C. § 1226(a)**
7 **(Jurisdictional Misclassification)**

8 **48. Mr. Reyes incorporates by reference the allegations of fact set forth in**
9 **the preceding paragraphs.**

10 **49. The DHS effectively asserts that Mr. Reyes is subject to mandatory**
11 **detention under 8 U.S.C. § 1225 as an “arriving alien,” despite having**
12 **detained him inside the United States with over twenty years of continuous**
13 **residence in the country after his entry; however, the fact is that it issued and**
14 **served him with an NTA which (a) did not categorize him as such and (b)**
15 **charged him under § 1226. Courts have consistently held that § 1226 governs**
16 **detention of noncitizens already in the country. See generally Jennings v.**

17
18
19
20 offering such workers “plata o plomo,” i.e., “silver or lead,” as
21 an incentive to use their office to work with them outside the
22 law; (c) President Trump has offered to send U.S. troops to
23 Mexico to help fight the cartels; (d) Mexico has continued its
24 policy of extraditing high level cartel operatives and their
25 cohorts in government (including the former national Secretary
26 of Public Security) to the United States as part of its war
27 against cartels; (e) the cartels and their cohorts in the Mexican
28 government operate with almost complete impunity in Mexico; and
(f) the Mexican government is aware of the persecution and
torture practices of the cartels and their cohorts within the
government but is either unwilling or unable to protect its
citizens and migrants from such unlawful practices.

PETITION FOR WRIT OF HABEAS CORPUS

1 **Rodriguez, 583 U.S. 281 (2018); Rodriguez v. Robbins, 715 F.3d 1127 (9th Cir.**
2 **2013).**

3 **50. The application of § 1225(b)(2) to Mr. Reyes unlawfully mandates his**
4 **continued detention.**

5 **SECOND CLAIM FOR RELIEF**
6 **Violation of the Fifth Amendment to the United States Constitution**
7 **(Substantive Due Process)**

8 **51. Mr. Reyes incorporates by reference the allegations of fact set forth in**
9 **all preceding and subsequent paragraphs.**

10 **52. The Due Process Clause of the Fifth Amendment forbids the**
11 **government from depriving any person of liberty “without due process of**
12 **law,” U.S. Const. Amend. V.**

13 **53. Mr. Reyes’s detention for a period of over four months has become**
14 **unreasonably prolonged.**

15 **54. The government has only two legitimate interests that may be served by**
16 **civil immigration detention: preventing flight from removal proceedings and**
17 **protecting the community from danger.**

18 **55. Mr. Reyes’s detention is untethered to any legitimate government**
19 **interests, which would be amply satisfied (as set forth by the IJ’s initial bond**
20 **order) by his release under a bond in the amount \$3,500.00 with appropriate**
21 **condition by DHS.**

22 **56. Mr. Reyes’s continued detention violates his Fifth Amendment right to**
23 **Due Process.**

24 **THIRD CLAIM FOR RELIEF**
25 **Violation of the Fifth Amendment to the United States Constitution**
26 **(Procedural Due Process)**

27 **PETITION FOR WRIT OF HABEAS CORPUS**

1 57. Mr. Reyes incorporates by reference the allegations of fact set forth in
2 the preceding paragraphs.

3 58. Mr. Reyes’s private interest in his liberty and the risk of erroneous
4 deprivation of that liberty far outweighs the government interest in detaining
5 him after an IJ has found that he is neither a danger to the community nor a
6 significant flight risk in need of continued detention.

7 59. Mr. Reyes’s continued detention violates his Fifth Amendment right to
8 Due Process.

9
10 **FOURTH CLAIM FOR RELIEF**
Violation of the *Ultra Vires* Doctrine

11 60. Mr. Reyes incorporates by reference the allegations of fact set forth in
12 the preceding paragraphs.

13 61. Section 1003.19(i)(2) of 8 C.F.R., the regulation permitting the
14 government to impose an automatic stay, exceeds its statutory authority under
15 the INA, which delegates bond decisions to Department of Justice (DOJ)
16 appointed IJs. See Romero v. INS, 39 F.3d 977, 980 (9th Cir. 1994); 28 U.S.C. §
17 510.

18
19 **FIFTH CLAIM FOR RELIEF**
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)

20 62. Mr. Reyes incorporates by reference the allegations of fact set forth in
21 the preceding paragraphs.

22 63. Under the Administrative Procedure Act, a court must “hold unlawful
23 and set aside agency action” that is “arbitrary, capricious, an abuse of
24 discretion, or otherwise not in accordance with the law,” that is “contrary to
25 constitutional right [or] power,” or that is “in excess of statutory jurisdiction,
26

1 authority, or limitations, or short of statutory right.” 5 U.S.C. § 706 (2)(A)-
2 (C).

3 **64. Respondents’ detention of Mr. Reyes pursuant to § 1225(b)(2) is**
4 **arbitrary and capricious. Respondents’ detention of Mr. Reyes violates the**
5 **INA and the Fifth Amendment. Respondents do not have statutory authority**
6 **under § 1225(b)(2) to detain him.**

7 **65. Mr. Reyes’s detention is arbitrary, capricious, an abuse of discretion,**
8 **violative of the Constitution, and without statutory authority in violation of 5**
9 **U.S.C. § 706(2).**

10 **PRAYER FOR RELIEF**

11 **WHEREFORE, Mr. Reyes respectfully requests that this Court take**
12 **jurisdiction over this matter and grant the following relief:**

- 14 **A. Issue a Writ of Habeas Corpus ordering Mr. Reyes’s immediate release**
15 **from detention pursuant to the IJ’s July 25, 2025 Order;**
- 17 **B. Enjoin respondents from transferring Mr. Reyes outside of the**
18 **Southern District of California, away from his family and counsel;**
- 20 **C. Declare Mr. Reyes’s detention in Respondents’ custody unlawful under**
21 **the INA and Due Process Clause of the Fifth Amendment of the United**
22 **States Constitution.**

24 **////**

26 **////**

1 **D. Grant any other and further relief that the Court deems just and**
2
3 **proper.**

4 **DATED: November 13, 2025**

MONTES, MONTES AND MONTES
Raul M. Montes, Esq.
Gilbert M. Montes, Esq.

7
8 /s/ Raul M. Montes

Raul M. Montes
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