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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GONZALO QUIAHUA-SALAS

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.: '25CV3165 BJC KSC

Agency File No:

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

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INTRODUCTION

2 1. Petitioner, *Gonzalo Quiahua-Salas*, is a Mexican national who has lived in the United
3 States since 2003 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. Relying on *Yajure-Hurtado*, DHS asserts that Petitioner is ineligible for release on
14 bond—even though an Immigration Judge granted him bond in the amount of $2,000. DHS
15 immediately appealed, and Petitioner remains detained solely because of the Government's legal
16 position.
17 5. Multiple recent decisions within this District have rejected DHS's reliance on § 235(b)
18 to detain long-settled residents apprehended in the interior. See *Valdovinos v. Noem*, No. 25-cv-
19 2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025) (Robinson, J.); *Esquivel-Ipina v. Noem*, No. 25-cv-
20 2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Mendez Chavez v. Noem*, No. 25-
21 cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025) (Sabraw, J.); *Medina-Ortiz v. Noem*, No. 25-cv-
22 2819-DMS-MMP (S.D. Cal. Oct. 30, 2025) (Sabraw, J.); *Martinez Lopez v. Noem*, No. 25-cv-
23 2717-JES-AHG (S.D. Cal. Oct. 30, 2025) (Sammartino, J.); *Garcia Magadan v. Noem*, No. 25-
24 cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025) (Simmons, J.); *Maceda-Garcia v. Noem*, No. 25-cv-
25 2968-JO-JLB (S.D. Cal. Nov. 13, 2025) (Ohta, J.); *Maravilla Amaya v. Noem*, No. 25-cv-2892-
26 BTM-DEB (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.). Each case was litigated by undersigned
27 counsel.
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1 6. As Judge Moskowitz recently held in *Maravilla Amaya*, the Court "must reject [Matter
2 of] *Hurtado* as inconsistent with Sections 1225 and 1226" because § 1225 "deals extensively
3 with arriving noncitizens who are actively seeking admission" (emphasis added), not individuals
4 arrested years after entering the United States.

5 7. Because the Board of Immigration Appeals itself issued *Matter of Yajure-Hurtado*, any
6 request for custody redetermination or further administrative appeal would be futile. Exhaustion
7 should therefore be excused. See *Singh v. Napolitano*, 649 F.3d 899, 900 (9th Cir. 2011)
8 (exhaustion excused where administrative remedy is unavailable or futile).

9 8. Petitioner's continued detention on this basis violates the plain text of the INA,
10 decades of longstanding agency practice, and the constitutional guarantees of Due Process.

11 9. This habeas petition challenges the government's position that Petitioner is subject to
12 mandatory custody under INA § 235 (8 U.S.C. § 1225).

13 10. Petitioner seeks (1) immediate release pursuant to the Immigration Judge's already-
14 issued bond order, or in the alternative, (2) a constitutionally adequate bond hearing before a
15 neutral decisionmaker, where the Government must prove by clear and convincing evidence that
16 continued detention is warranted under the Due Process Clause of the Fifth Amendment.

17 **JURISDICTION AND VENUE**

18 11. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in the
19 custody of the Department of Homeland Security within this District and he challenges the
20 legality of that custody.

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

24 13. Neither 8 U.S.C. § 1252(g) nor § 1252(b)(9) strips this Court of jurisdiction. Section
25 1252(g) bars only challenges to the Attorney General's discretionary decisions to "commence
26 proceedings, adjudicate cases, or execute removal orders," not independent challenges to
27 unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts

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of appeals, but does not foreclose habeas review of detention claims, which are collateral to the removal proceedings.

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

PARTIES

15. Petitioner, Gonzalo Quiahua-Salas, is a Mexican national detained at the Otay Mesa Detention Center, in San Diego, California.

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

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

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

19. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention Center.

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

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

22. All Respondents are named in their official capacities.

LEGAL FRAMEWORK

23. The Immigration and Nationality Act ("INA"), codified at 8 U.S.C. § 1101 et seq., provides multiple detention authorities. For decades, courts, Congress, and agencies have consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. § 1225), which governs applicants for admission encountered at or near the border, and INA § 236 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the

1 United States and placed in removal proceedings. The Supreme Court analyzed the interplay
2 between these provisions in *Jennings v. Rodriguez*, 583 U.S. 281 (2018).

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

14 25. By contrast, § 1226(a) governs the detention of individuals who entered years ago and
15 were later apprehended in the interior, "pending a decision on whether [they are] to be removed
16 from the United States." *Jennings*, 583 U.S. at 303. Unlike § 1225, which applies at the border, §
17 1226(a) authorizes the Attorney General to detain or release such individuals on bond or
18 conditional parole, except as provided in subsection (c), which applies only to a narrow category
19 of noncitizens with specified criminal or security-related grounds. *Id.* at 303, 306. Arrests made
20 pursuant to § 1226(a) are ordinarily executed on administrative warrants, and longstanding
21 regulations confirm that such individuals are eligible for Immigration Judge bond hearings. See 8
22 C.F.R. §§ 236.1(c)(8), 236.1(d)(1), 1236.1(d)(1); 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).
23 Congress further described § 1226(a) as merely a "restatement" of prior detention authority
24 under former INA § 242(a), confirming its application to interior arrests pending removal. H.R.
25 Rep. No. 104-469, pt. 1, at 229 (1996).

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

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

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

29. That same interpretation was recently formalized in *Matter of Yajure-Hurtad*o, a precedential decision eliminating Immigration Judge jurisdiction to redetermine custody for such individuals.

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

FACTS

31. Petitioner is a Mexican national who has lived in the United States since 2003, after entering without inspection.

1 32. Petitioner has deep and longstanding ties to his community.

2 33. Petitioner has three U.S.-citizen children, two under 21.

3 34. Petitioner is *prima facie* eligible for cancellation of removal.

4 35. On or about August 4, 2025, ICE officers arrested Petitioner near his home while he
5 was driving his work van after purchasing supplies at a paint store.

6 36. Petitioner was then served with a Notice to Appear, and removal proceedings were
7 initiated against him before the Annandale Immigration Court in Virginia.

8 37. On August 28, 2025, Immigration Judge Jamie Perry, sitting at the Annandale
9 Immigration Court, conducted a bond redetermination hearing. The Department argued that the
10 Court lacked jurisdiction, asserting that Petitioner was an "applicant for admission" detained
11 under INA § 235(b)(2). Through his custody redetermination counsel, Petitioner opposed that
12 interpretation and argued that his detention arose under INA § 236(a). After reviewing the record
13 and hearing arguments, the Immigration Judge found that Petitioner had been arrested in the
14 interior, rather than while arriving at the border, and therefore concluded that jurisdiction
15 properly lay under § 236(a). The Court granted release on a $2,000 bond, and the Department
16 reserved appeal. See *Exhibit 1* (Bond Order of the Immigration Judge).

17 38. Petitioner was subsequently transferred to the Otay Mesa Detention Center, where he
18 is currently detained, with removal proceedings pending before the Otay Mesa Immigration
19 Court.

20 39. 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 40. The decision eliminated Immigration Judge jurisdiction to conduct custody
25 redeterminations for such individuals.

26 41. On September 30, 2025, Immigration Judge Karen Donoso Stevens issued a written
27 Bond Memorandum and Order explaining the legal basis for the August 28, 2025 bond ruling

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and reiterating that Mr. Quihua-Salas was ordered released on a $2,000 bond. Judge Donoso Stevens noted that the decision was made before *Matter of Yajure-Hurtado* was issued and reflected the state of the law at the time of the custody hearing. See *Exhibit 2* (Bond Memorandum and Order of Immigration Judge Karen Donoso Stevens).

42. Because *Matter of Yajure-Hurtado* was issued by the BIA—the same body now reviewing DHS's appeal of the bond order—any further administrative request for release would be futile. The Immigration Judge has already granted bond, and no additional relief is available through the agency. Accordingly, exhaustion should be deemed futile and excused.

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

CLAIM FOR RELIEF

COUNT 1

Violation of the Immigration and Nationality Act (INA)

44. Petitioner incorporates by reference the allegations of fact set forth in the preceding paragraphs.

45. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to grounds of inadmissibility. It does not extend to individuals who entered and remained in the country beyond the two-year limitation Congress established for expedited removal. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (authorizing expedited removal only for those "who have not been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility"). Petitioner has lived in the United States since 2003 and is therefore not lawfully detained under INA § 235(b); to the extent he remains in custody, detention must proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which authorizes release on bond or conditional parole.

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

COUNT 2

Violation of the Due Process Clause of the Fifth Amendment

47. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth herein.

48. The Fifth Amendment provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law."

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A) Assume jurisdiction over this matter;

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

1 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring
2 Respondents to explain the legal basis for Petitioner's continued detention;
3 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent
4 Petitioner remains in custody, such detention must proceed under INA § 236(a).
5 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his
6 continued detention violates the Immigration and Nationality Act and the Due Process Clause of
7 the Fifth Amendment.
8 F) Issue a Writ of Habeas Corpus ordering Petitioner's immediate release pursuant to the
9 Immigration Judge's already-issued $2,000 bond order, or, in the alternative, order a
10 constitutionally adequate bond hearing before a neutral decisionmaker at which the Government
11 must prove by clear and convincing evidence that continued detention is justified under the Due
12 Process Clause of the Fifth Amendment;
13 G) Grant such other and further relief as the Court deems just and proper.
14 Respectfully submitted,

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22 Dated: November 16, 2025
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