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

**BRADLEI GUTIERREZ 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.: '25CV3273 AGS KSC

Agency File No: [redacted]

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

## INTRODUCTION

1. Petitioner, Bradlei Gutierrez Velazquez, is a Guatemalan national who has lived in the United States since 2019 and is currently in DHS custody at the Otay Mesa Detention Center.

2. Petitioner now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have adopted a new interpretation of the Immigration and Nationality Act (INA), recently formalized by the Board of Immigration Appeals (BIA) in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which treats all individuals who entered without inspection as "applicants for admission" subject to mandatory detention under INA § 235(b)(2)(A).

3. Multiple recent decisions within this District have rejected DHS's reliance on § 235(b) to detain long-settled residents apprehended in the interior. See *Valdovinos v. Noem*, No. 25-cv-2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025) (Robinson, J.); *Esquivel-Ipina v. Noem*, No. 25-cv-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Mendez Chavez v. Noem*, No. 25-cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025) (Sabraw, J.); *Medina-Ortiz v. Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025) (Sabraw, J.); *Martinez Lopez v. Noem*, No. 25-cv-2717-JES-AHG (S.D. Cal. Oct. 30, 2025) (Simmons, J.); *Garcia Magadan v. Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025) (Simmons, J.); *Maceda-Garcia v. Noem*, No. 25-cv-2968-JO-JLB (S.D. Cal. Nov. 13, 2025) (Ohta, J.); *Maravilla Amaya v. Noem*, No. 25-cv-2892-BTM-DEB (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.); *Lucas-Miguel v. Noem*, No. 3:25-cv-03022-RSH-JLB (S.D. Cal. Nov. 2025) (Huie, J.); and *Fernando-Barrueta v. Noem*, No. 3:25-cv-02670-LL-SBC (S.D. Cal. Nov. 21, 2025) (Lopez, J.); and *Chiapot Perez v. Noem*, No. 3:25-cv-03161-JES-VET (S.D. Cal. Nov. 2025) (Simmons, J.). Each of these cases—also litigated by undersigned counsel—resulted in the same conclusion: DHS may not invoke § 235(b) to detain individuals apprehended in the interior years after entry, and such custody must proceed, if at all, under § 236(a).

4. The newly adopted interpretation bars noncitizens like Petitioner from seeking release on bond under INA § 236 (8 U.S.C. § 1226) and the procedures provided in 8 C.F.R. §§ 1003.19(a), 1236.1(d).

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

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

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

8. Petitioner seeks a writ of habeas corpus ordering his release on the $6,500 bond previously authorized by the Immigration Judge or, alternatively, a constitutionally adequate bond hearing before a neutral decisionmaker, where the Government must prove by clear and convincing evidence that continued detention is warranted under the Due Process Clause of the Fifth Amendment.

## JURISDICTION AND VENUE

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

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

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

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

12. 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

13. Petitioner, Bradlei Gutierrez Velazquez, is a Guatemalan national detained at the Otay Mesa Detention Center, in San Diego, California.

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

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

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

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

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

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

20. All Respondents are named in their official capacities.

## LEGAL FRAMEWORK

21. 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

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

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

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

24. For decades, individuals who entered without inspection but resided in the United States and were later arrested in the interior were consistently treated as subject to § 1226(a)'s

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).

25. 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.

26. 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.

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

28. 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

29. Petitioner is a Guatemalan national who has lived in the United States since 2019, after entering without inspection.

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

31. On or about May 19, 2025, ICE officers arrested Petitioner in the state of Florida.

32. Petitioner was then served with a Notice to Appear, and removal proceedings were initiated against him.

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

34. On August 12, 2025, Immigration Judge Mark Sameit, sitting at the Otay Mesa Immigration Court, conducted a bond redetermination hearing. After reviewing the record and hearing arguments, the Immigration Judge found that Petitioner had been arrested in the interior, rather than while arriving at the border, and therefore concluded that jurisdiction properly lay under INA § 236(a). The Court granted release upon posting of a $6,500 bond, and the Department reserved appeal. See *Exhibit 1* (Bond Order of the Immigration Judge).

35. Subsequently, the Department of Homeland Security appealed the Immigration Judge's August 12, 2025 bond order.

36. On September 4, 2025, Immigration Judge Mark Sameit issued a detailed Bond Memorandum reaffirming that the Immigration Court retained jurisdiction under INA § 236(a) to conduct custody redeterminations for individuals apprehended years after entering the United States. The Court rejected DHS's argument that Respondent was an "applicant for admission" detained under INA § 235(b), explaining that the statutory term is a "term of art" with temporal limits and cannot be applied to noncitizens who have been physically present in the United States for extended periods. Citing *Torres v. Barr*, 976 F.3d 918 (9th Cir. 2020), and *United States v. Gambino-Ruiz*, 91 F.4th 981 (9th Cir. 2024), the Court emphasized that individuals are not in a perpetual "application for admission" and cannot be treated as applicants for admission many years after entry. Judge Sameit further noted that Respondent was not detained near the border, had resided in the United States since his 2019 entry, and was not an arriving alien subject to expedited removal under 8 C.F.R. § 235.3(b)(1)(ii). The Court also observed that *Matter of*

*Akhmedov*, 29 I&N Dec. 166 (BIA 2025), confirms that not all individuals who entered without inspection fall under § 235(b). Having found jurisdiction under INA § 236(a), the Court determined that Respondent posed no danger to the community and that any risk of flight could be mitigated through a modest bond and Alternatives to Detention. Applying Matter of Guerra, 24 I&N Dec. 37 (BIA 2006), the Immigration Judge ordered Respondent's release on a $6,500 bond. See *Exhibit 2* (Bond Memorandum of the Immigration Judge, Sept. 4, 2025.)

37. On September 5, 2025, the Board of Immigration Appeals issued its precedential decision in *Matter of Yajure-Hurtado*. The Board held that all noncitizens who entered with out inspection are "applicants for admission" under INA § 235, regardless of how long ago they entered or their family and community ties.

38. The decision eliminated Immigration Judge jurisdiction to conduct custody redeterminations for such individuals.

39. On October 29, 2025, the Board of Immigration Appeals vacated the Immigration Judge's decision based exclusively on the *Matter of Yajure Hurtado* rationale. See *Exhibit 3* (BIA Decision Vacating Bond Order).

40. Because *Matter of Yajure-Hurtado* was issued by the BIA—the very body that has eliminated Immigration Judge jurisdiction to redetermine custody for individuals in Petitioner's position—any further administrative request for release would be futile. The Immigration Judge has already denied bond for lack of jurisdiction under *Yajure-Hurtado*, and no additional relief is available through the agency. Accordingly, exhaustion should be deemed futile and excused.

41. 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.

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## CLAIM FOR RELIEF

### COUNT 1

### Violation of the Immigration and Nationality Act (INA)

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

43. 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 2019 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.

44. 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**

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

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

47. "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).

48. Civil immigration detention is constitutionally permissible only when reasonably related to legitimate governmental objectives, such as preventing flight risk or protecting the community. Here, continued detention achieves neither and, consistent with *Zadvydas v. Davis,* 533 U.S. 678, 690 (2001), has ceased to serve a regulatory purpose and instead has become punitive and violates the Due Process Clause.

49. By detaining Petitioner indefinitely under INA § 235(b) pursuant to the Board's new interpretation in *Matter of Yajure Hurtado*, which nullified a bond previously granted after an individualized redetermination hearing, Respondents have effectively deprived Petitioner of the liberty interest recognized under INA § 236(a) and violated his 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;

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

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

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

F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner on the $6,500 bond previously authorized by the Immigration Judge, or, in the alternative, to conduct a new,

constitutionally adequate bond hearing before a neutral decisionmaker at which the Government must justify Petitioner's continued detention by clear and convincing evidence.

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

Respectfully submitted,

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