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

8  
9 **ANTONIO CHAVEZ VALDOVINOS**

10 Petitioner

11 v.

12 **Christopher LAROSE**, Senior Warden, Otay

13 Mesa Detention Center;

14 **Kristi NOEM**, Secretary, U.S. Department of

15 Homeland Security;

16 **Todd LYONS**, Acting Director, U.S.

17 Immigration and Customs Enforcement;

18 **Patrick DIVVER**, Field Office Director, San

19 Diego Field Office, U.S. Immigration and

20 Customs Enforcement.

21 **Sirce OWEN**, Acting Director of the Executive

22 Office for Immigration Review (EOIR),

23 U.S. Department of Justice.

24 **Pamela BONDI**, Attorney General, U.S.

25 Department of Justice.

26 Respondents  
27

Case No.: '25CV3460 RSH DDL

Agency File No:



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

1 **INTRODUCTION**

2 1. Petitioner, Antonio Chavez Valdovinos, is a Mexican national who has lived in the  
3 United States since 2008 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 noncitizens who entered without inspection, and who were apprehended in the interior long  
9 after their entry, as ‘applicants for admission’ subject to detention without bond under INA §  
10 235(b)(2)(A).

11 3. Multiple recent decisions within this District have rejected DHS’s reliance on § 235(b)  
12 to detain long-settled residents apprehended in the interior. See *Valdovinos v. Noem*, No. 25-cv-  
13 2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025) (Robinson, J.); *Esquivel-Ipina v. Noem*, No. 25-cv-  
14 2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Mendez Chavez v. Noem*, No. 25-  
15 cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025) (Sabraw, J.); *Medina-Ortiz v. Noem*, No. 25-cv-  
16 2819-DMS-MMP (S.D. Cal. Oct. 30, 2025) (Sabraw, J.); *Martinez Lopez v. Noem*, No. 25-cv-  
17 2717-JES-AHG (S.D. Cal. Oct. 30, 2025) (Simmons, J.); *Garcia Magadan v. Noem*, No. 25-cv-  
18 2889-JES-KSC (S.D. Cal. Nov. 5, 2025) (Simmons, J.); *Maceda-Garcia v. Noem*, No. 25-cv-  
19 2968-JO-JLB (S.D. Cal. Nov. 13, 2025) (Ohta, J.); *Maravilla Amaya v. Noem*, No. 25-cv-2892-  
20 BTM-DEB (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.); *Lucas-Miguel v. Noem*, No. 3:25-cv-  
21 03022-RSH-JLB (S.D. Cal. Nov. 2025) (Huie, J.); and *Fernando-Barrueta v. Noem*, No. 3:25-  
22 cv-02670-LL-SBC (S.D. Cal. Nov. 21, 2025) (Lopez, J.); and *Chiapot Perez v. Noem*, No. 3:25-  
23 cv-03161-JES-VET (S.D. Cal. Nov. 2025) (Simmons, J.). Each of these cases resulted in the  
24 same conclusion: DHS may not invoke § 235(b) to detain individuals apprehended in the interior  
25 years after entry, and such custody must proceed, if at all, under § 236(a).

1 4. The newly adopted interpretation bars noncitizens like Petitioner from seeking release  
2 on bond under INA § 236 (8 U.S.C. § 1226) and the procedures provided in 8 C.F.R. §§  
3 1003.19(a), 1236.1(d).

4 5. Because DHS has classified Petitioner as subject to detention under 8 U.S.C. §  
5 1225(b), the Immigration Court lacks jurisdiction to conduct a custody redetermination hearing.  
6 See 8 C.F.R. § 1003.19(h)(2)(i)(B). As no administrative remedy exists to review his custody  
7 classification or detention, exhaustion would be futile. Courts routinely excuse exhaustion where  
8 administrative remedies are unavailable or would be futile. See *Singh v. Napolitano*, 649 F.3d  
9 899, 900 (9th Cir. 2011).

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

12 7. This habeas petition challenges the government's misclassification of Petitioner's  
13 custody as subject to mandatory detention under INA § 235.

14 8. Petitioner seeks a writ of habeas corpus ordering his release from custody, or, in the  
15 alternative, a new individualized bond hearing under INA § 236(a) before a neutral Immigration  
16 Judge, following Respondents' unlawful vacatur of the Immigration Judge's prior bond order  
17 based solely on an erroneous custody classification.

### 18 JURISDICTION AND VENUE

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

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

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

1 unlawful detention. Likewise, § 1252(b)(9) consolidates review of removal orders in the courts  
2 of appeals, but does not foreclose habeas review of detention claims, which are collateral to the  
3 removal proceedings.

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

### 6 PARTIES

7 13. Petitioner, Antonio Chavez Valdovinos, is a Mexican national detained at the Otay  
8 Mesa Detention Center, in San Diego, California.

9 14. Respondent Christopher LaRose is the Senior Warden of the Otay Mesa Detention  
10 Center.

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

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

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

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

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

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

### 22 LEGAL FRAMEWORK

23 21. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq.,  
24 provides multiple detention authorities. For decades, courts, Congress, and agencies have  
25 consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. §  
26 1225), which governs applicants for admission encountered at or near the border, and INA § 236  
27 (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 22. 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 23. 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 24. 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

1 discretionary detention framework. This included those who could not lawfully be placed in  
2 expedited removal because they had been continuously present in the United States for more than  
3 two years, as required by § 1225(b)(1)(A)(iii)(II).

4 25. Only in 2025 did DHS and the BIA begin advancing a contrary interpretation—  
5 asserting that all noncitizens who entered without inspection must be treated as detained under §  
6 1225(b)(2). This abrupt shift departed from decades of agency practice and contradicted settled  
7 expectations regarding custody jurisdiction.

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

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

16 28. Surprisingly, in January 2025, Congress reaffirmed that 8 U.S.C. § 1226(a), not §  
17 1225(b), governs custody for noncitizens apprehended in the interior. Through the Laken Riley  
18 Act of 2025, Congress amended § 1226(c) to add subparagraph (E), extending mandatory  
19 detention only to a narrow category of individuals who (i) are inadmissible under § 1182(a)(6)–  
20 (7) and (ii) also meet specific criminal-conduct criteria. By creating this limited carve-out,  
21 Congress confirmed that § 1226(a) remains the general detention framework for interior arrests,  
22 and that mandatory detention applies only to the narrow class defined in new § 1226(c)(E). If, as  
23 DHS and the BIA now contend, all such individuals were already subject to mandatory detention  
24 under § 1225(b)(2), Congress’s amendment would have been superfluous.

25 **FACTS**

26 29. Petitioner is a Mexican national who has lived in the United States since 2008, after  
27 entering without inspection.

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

2 31. Petitioner is legally married to a U.S. citizen and is the father of a U.S.-born minor  
3 child.

4 32. Petitioner is prima facie eligible for Cancellation of Removal under INA § 240A(b).

5 33. On July 21, 2025, ICE agents arrested Petitioner outside his residence, allegedly  
6 based on an anonymous tip received through the ICE tip line.

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

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

12 36. On August 22, 2025, Immigration Judge Mark Sameit conducted the custody  
13 redetermination hearing. DHS argued that the Court lacked jurisdiction to redetermine custody,  
14 claiming that all individuals who entered without inspection are “applicants for admission”  
15 subject to mandatory detention under INA § 235.

16 37. The Immigration Judge rejected DHS’s argument and agreed with Petitioner that  
17 custody was governed by INA § 236.

18 38. The Court granted Petitioner’s motion and ordered his release on a \$12,000  
19 immigration bond. DHS reserved appeal.

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 November 25, 2025, the United States District Court for the Central District of  
27 California granted class certification in *Lazaro Maldonado Bautista et al. v. Santacruz et al.*, No.

1 5:25-cv-01873 (C.D. Cal.), concerning DHS’s practice of classifying certain noncitizens as  
2 subject to detention without bond under INA § 235(b) based on agency policy rather than  
3 individualized custody determinations. As the court explained, members of the certified class are  
4 denied Immigration Judge custody redetermination hearings as a result of DHS’s custody  
5 classifications, presenting common questions of law and fact regarding the legality of that  
6 detention framework.

7 42. On December 05, 2025, the Board of Immigration Appeals issued an order, sustaining  
8 the DHS's appeal, and vacating the Immigration Judge's August 22, 2025, bond order. (Exh. 1).

9 43. Because the Board of Immigration Appeals has already exercised its appellate  
10 authority, sustained DHS’s appeal, and vacated the Immigration Judge’s bond order, no further  
11 administrative mechanism exists through which Petitioner may seek custody redetermination.  
12 Accordingly, exhaustion should be excused.

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

16 **CLAIM FOR RELIEF**

17 **COUNT 1**

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

19 45. Petitioner incorporates by reference the allegations of fact set forth in the preceding  
20 paragraphs.

21 46. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all  
22 noncitizens residing in the United States who are subject to grounds of inadmissibility. It does  
23 not extend to individuals who entered and remained in the country beyond the two-year  
24 limitation Congress established for expedited removal. See 8 U.S.C. § 1225(b)(1)(A)(iii)(II)  
25 (authorizing expedited removal only for those “who have not been physically present in the  
26 United States continuously for the 2-year period immediately prior to the date of the  
27 determination of inadmissibility”). Petitioner has lived in the United States since 2008 and is

1 therefore not lawfully detained under INA § 235(b); to the extent he remains in custody,  
2 detention must proceed under INA § 236(a) (8 U.S.C. § 1226(a)), which authorizes release on  
3 bond or conditional parole.

4 47. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully  
5 mandates his continued detention in violation of the INA. Section 235(b)(2) applies only to  
6 “applicants for admission” encountered at or near the border—not to individuals who, like  
7 Petitioner, entered the United States long ago and were later arrested in the interior. See *Jennings*  
8 *v. Rodriguez*, 583 U.S. 281, 297 (2018); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103,  
9 113 (2020). By treating Petitioner as an applicant for admission rather than a respondent under  
10 INA § 236(a) (8 U.S.C. § 1226(a)), DHS and EOIR have acted contrary to the statutory text,  
11 agency precedent, and the limits Congress reaffirmed in the Laken Riley Act of 2025.

12 **COUNT 2**

13 **Violation of the Due Process Clause of the Fifth Amendment**

14 48. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth  
15 herein.

16 49. The Fifth Amendment provides that “[n]o person shall be deprived of life, liberty, or  
17 property, without due process of law.”

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

21 51. Civil immigration detention is constitutionally permissible only when reasonably  
22 related to legitimate governmental objectives, such as preventing flight risk or protecting the  
23 community. Here, continued detention achieves neither and, consistent with *Zadvydas v. Davis*,  
24 533 U.S. 678, 690 (2001), has ceased to serve a regulatory purpose and instead has become  
25 punitive and violates the Due Process Clause.

26 52. By classifying Petitioner’s custody as governed by INA § 235(b) pursuant to the  
27 Board’s new interpretation in *Matter of Yajure-Hurtado*—which categorically eliminates

1 Immigration Judge jurisdiction to conduct custody redeterminations for individuals DHS  
2 classifies under § 1225(b)—Respondents have deprived Petitioner of any meaningful opportunity  
3 for an individualized custody determination. This deprivation violates the liberty interests  
4 protected by INA § 236(a) and the Due Process Clause of the Fifth Amendment.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner respectfully requests that this Court:

7 A) Assume jurisdiction over this matter;

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

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

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

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

17 F) Issue a Writ of Habeas Corpus ordering Petitioner’s immediate release, or, in the alternative,  
18 order a new individualized bond hearing under INA § 236(a) before a neutral Immigration Judge,  
19 at which the Government bears the burden of justifying continued detention;

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

21 Respectfully submitted,

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24 ///

25 ///

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

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Counsel for Petitioner

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