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

8
9 **JOSE ALVAREZ-HUERTA**

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.: '25CV3476 JES MMP

Agency File No:



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

1 **INTRODUCTION**

2 1. Petitioner, Jose Alvarez-Huerta, is a Mexican national who is currently in DHS
3 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 DHS now invokes to classify noncitizens apprehended in the interior long after entry as
9 ‘applicants for admission’ subject to detention under INA § 235(b)(2)(A).

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

25 4. The newly adopted interpretation bars noncitizens like Petitioner from seeking release
26 on bond under INA § 236 (8 U.S.C. § 1226) and the procedures provided in 8 C.F.R. §§
27 1003.19(a), 1236.1(d).

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

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

9 7. This habeas petition challenges the government’s misclassification of Petitioner as
10 subject to custody under INA § 235 (8 U.S.C. § 1225).

11 8. Petitioner seeks a writ of habeas corpus ordering his immediate release, or, in the
12 alternative, a constitutionally adequate custody hearing before a neutral decisionmaker at which
13 the Government bears the burden of proving by clear and convincing evidence that continued
14 detention is warranted, and where the adjudicator must consider alternatives to detention and
15 Petitioner’s ability to pay any bond imposed.

16 **JURISDICTION AND VENUE**

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

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

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

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

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

5 **PARTIES**

6 13. Petitioner, Jose Alvarez-Huerta, is a Mexican national detained at the Otay Mesa
7 Detention Center, in San Diego, California.

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

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

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

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

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

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

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

21 **LEGAL FRAMEWORK**

22 21. The Immigration and Nationality Act (“INA”), codified at 8 U.S.C. § 1101 et seq.,
23 provides multiple detention authorities. For decades, courts, Congress, and agencies have
24 consistently distinguished between two distinct statutory frameworks: INA § 235 (8 U.S.C. §
25 1225), which governs applicants for admission encountered at or near the border, and INA § 236
26 (8 U.S.C. § 1226), which governs the arrest and detention of individuals already present in the
27

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 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 resided in the United States for many years
27 following an entry without inspection.

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

2 31. Petitioner is legally married to a United States citizen. He is the biological father of
3 two United States citizen children under the age of twenty-one, and he has also served as a
4 parental figure to two adult United States citizen stepchildren, the biological children of his U.S.
5 citizen spouse.

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

7 33. On or about September 9, 2025, ICE officers arrested Petitioner when he was
8 shopping at a local VONS, in the city of Escondido, state of California.

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

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

14 36. On September 5, 2025, the Board of Immigration Appeals issued its precedential
15 decision in *Matter of Yajure-Hurtado*. The Board held that noncitizens who entered without
16 inspection are “applicants for admission” under INA § 235, regardless of how long ago they
17 entered or their family and community ties.

18 37. The decision eliminated Immigration Judge jurisdiction to conduct custody
19 redeterminations for such individuals.

20 38. Because *Matter of Yajure-Hurtado* was issued by the Board of Immigration Appeals
21 —the authority that removed Immigration Judge jurisdiction to redetermine custody for
22 individuals DHS classifies under § 1225(b)—any request for a bond hearing would be futile. The
23 Immigration Judge assigned to Petitioner’s removal proceedings has, in a recent custody order
24 issued in an unrelated case, stated that he lacks jurisdiction to conduct custody redeterminations
25 under *Yajure-Hurtado* for individuals classified under § 1225(b). Given this stated position, no
26 administrative mechanism exists through which Petitioner could obtain custody review.
27 Accordingly, exhaustion is futile and should be excused.

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

4 **CLAIM FOR RELIEF**

5 **COUNT 1**

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

7 40. Petitioner incorporates by reference the allegations of fact set forth in the preceding
8 paragraphs.

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

19 42. The application of INA § 235(b)(2) (8 U.S.C. § 1225(b)(2)) to Petitioner unlawfully
20 mandates his continued detention in violation of the INA. Section 235(b)(2) applies only to
21 “applicants for admission” encountered at or near the border—not to individuals who, like
22 Petitioner, entered the United States years ago and were later arrested in the interior. See
23 *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591
24 U.S. 103, 113 (2020). By treating Petitioner as an applicant for admission rather than a
25 respondent under INA § 236(a) (8 U.S.C. § 1226(a)), DHS and EOIR have acted contrary to the
26 statutory text, agency precedent, and the limits Congress reaffirmed in the Laken Riley Act of
27 2025.

1
2 **COUNT 2**

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

4 43. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth
5 herein.

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

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

11 46. Civil immigration detention is constitutionally permissible only when reasonably
12 related to legitimate governmental objectives, such as preventing flight risk or protecting the
13 community. Here, continued detention achieves neither and, consistent with *Zadvydas v. Davis*,
14 533 U.S. 678, 690 (2001), has ceased to serve a regulatory purpose and instead has become
15 punitive and violates the Due Process Clause.

16 47. By continuing to detain Petitioner based on an unlawful classification of his custody
17 as governed by INA § 235(b) pursuant to the Board’s new interpretation in *Matter of Yajure-*
18 *Hurtado*, —which categorically eliminates Immigration Judge jurisdiction to conduct custody
19 redeterminations for individuals DHS classifies under § 1225(b)—Respondents have deprived
20 Petitioner of any opportunity for an individualized custody determination. This deprivation of a
21 meaningful opportunity to be heard violates the liberty interests protected by INA § 236(a) and
22 the Due Process Clause of the Fifth Amendment.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Petitioner respectfully requests that this Court:

- 25 A) Assume jurisdiction over this matter;
26 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this
27 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 Respondents to release Petitioner immediately from
9 custody, or, in the alternative, order a constitutionally adequate bond hearing before a neutral
10 decisionmaker at which the Government must justify his continued detention by clear and
11 convincing evidence;

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

13 Respectfully submitted,

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

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21 Dated: December 8, 2025