

1 Alejandro Monsalve  
2 CA SBN 324958  
3 Alex Monsalve Law Firm, PC  
4 240 Woodlawn Ave., Suite 9  
5 Chula Vista, CA 91910  
6 (619) 777-6796  
7 Counsel for Petitioner

8  
9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 **FLORENCIO PEREZ MARTINEZ**

12 Petitioner

13 v.

14 **Christopher LAROSE**, Senior Warden, Otay

15 Mesa Detention Center;

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

17 Homeland Security;

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

19 Immigration and Customs Enforcement;

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

21 Diego Field Office, U.S. Immigration and

22 Customs Enforcement.

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

24 Office for Immigration Review (EOIR),

25 U.S. Department of Justice.

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

27 Department of Justice.

28 Respondents

Case No.: '25CV3492 DMS AHG

Agency File No: 

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

**INTRODUCTION**

1  
2 1. Petitioner, Florencio Perez Martinez, is a Mexican national who has lived in the United  
3 States since 1997 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 in *Matter of*  
7 *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which DHS now invokes to classify certain  
8 noncitizens who entered without inspection as “applicants for admission” subject to detention  
9 without bond under INA § 235(b)(2)(A).

10 3. Multiple recent decisions within this District have rejected DHS’s reliance on INA §  
11 235(b) to detain noncitizens apprehended in the interior long after entry. See *Valdovinos v.*  
12 *Noem*, No. 25-cv-2439-TWR (KSC) (S.D. Cal. Sept. 25, 2025) (Robinson, J.); *Esquivel-Ipina v.*  
13 *Noem*, No. 25-cv-2672-JLS (BLM) (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Mendez Chavez*  
14 *v. Noem*, No. 25-cv-2818-DMS-SBC (S.D. Cal. Oct. 31, 2025) (Sabraw, J.); *Medina-Ortiz v.*  
15 *Noem*, No. 25-cv-2819-DMS-MMP (S.D. Cal. Oct. 30, 2025) (Sabraw, J.); *Martinez Lopez v.*  
16 *Noem*, No. 25-cv-2717-JES-AHG (S.D. Cal. Oct. 30, 2025) (Simmons, J.); *Garcia Magadan v.*  
17 *Noem*, No. 25-cv-2889-JES-KSC (S.D. Cal. Nov. 5, 2025) (Simmons, J.); *Maceda-Garcia v.*  
18 *Noem*, No. 25-cv-2968-JO-JLB (S.D. Cal. Nov. 13, 2025) (Ohta, J.); *Maravilla Amaya v. Noem*,  
19 No. 25-cv-2892-BTM-DEB (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.); *Lucas-Miguel v. Noem*,  
20 No. 3:25-cv-03022-RSH-JLB (S.D. Cal. Nov. 2025) (Huie, J.); and *Fernando-Barrueta v. Noem*,  
21 No. 3:25-cv-02670-LL-SBC (S.D. Cal. Nov. 21, 2025) (Lopez, J.); and *Chiapot Perez v. Noem*,  
22 No. 3:25-cv-03161-JES-VET (S.D. Cal. Nov. 2025) (Simmons, J.). Each of these cases resulted  
23 in the same conclusion: DHS may not invoke § 235(b) to detain individuals apprehended in the  
24 interior 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's  
10 custody as subject to mandatory detention 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, Florencio Perez Martinez, is a Mexican national detained at the Otay  
7 Mesa 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 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 1997, after  
27 entering without inspection.

1 30. Petitioner has deep ties to his community arising from decades of residence in the  
2 United States.

3 31. Petitioner is legally married to a United States citizen and has a minor stepdaughter,  
4 age 11, who is also a United States citizen.

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

7 33. On November 18, 2025, ICE officers arrested Petitioner as he presented himself to a  
8 regular ICE check-in appointment at the San Diego Field Office.

9 34. 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 35. Petitioner's prior removal proceedings were reopened and recalendared before the  
13 Otay Mesa Immigration Court, where his case is currently pending.

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 all 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. On November 25, 2025, the United States District Court for the Central District of  
21 California issued an order granting class certification in *Lazaro Maldonado Bautista et al. v.*  
22 *Santacruz et al.*, No. 5:25-cv-01873 (C.D. Cal.). The court certified a class of noncitizens  
23 detained by DHS who are classified as subject to detention without bond based on DHS's  
24 application of INA § 235(b) and accompanying agency policy. As described in the certification  
25 order, members of the class are denied Immigration Judge custody redetermination hearings as a  
26 result of DHS's custody classifications, rather than through individualized custody  
27 determinations made by the Immigration Court. The court certified the class under Federal Rule

1 of Civil Procedure 23, finding that the challenged custody practices presented common questions  
2 of law and fact applicable to the class as a whole.

3 39. On December 5, 2025, Immigration Judge Guy Grande of the Otay Mesa Immigration  
4 Court denied a request for custody redetermination filed by Petitioner’s immigration attorney. In  
5 the written custody order, Judge Grande stated that the respondent was subject to mandatory  
6 detention under *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), and that Immigration  
7 Judge jurisdiction to conduct custody redeterminations was foreclosed on that basis. The order  
8 further acknowledged that the United States District Court for the Central District of California  
9 had granted class certification in *Maldonado Bautista v. Noem*, but noted that the class action  
10 remained pending before the district court. (Exhibit 1).

11 40. Because *Matter of Yajure-Hurtado* was issued by the Board of Immigration Appeals  
12 —the authority that eliminated Immigration Judge jurisdiction to redetermine custody for  
13 individuals DHS classifies under § 1225(b)—any request for a bond hearing would be futile. The  
14 Immigration Judge assigned to Petitioner’s removal proceedings has, in a recent custody order  
15 issued in Petitioner’s case, expressly stated that he lacks jurisdiction to conduct custody  
16 redeterminations under *Yajure-Hurtado* for individuals classified under § 1225(b). In light of this  
17 binding agency precedent and the Immigration Judge’s stated position, Petitioner lacks any  
18 available administrative mechanism through which to obtain custody redetermination.  
19 Accordingly, exhaustion should be excused.

20 41. Absent relief from this Court, Petitioner faces continued immigration custody without  
21 the opportunity for an individualized hearing to justify his detention, in violation of the INA and  
22 the Due Process Clause.

23 **CLAIM FOR RELIEF**

24 **COUNT 1**

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

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



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

4 48. Civil immigration detention is constitutionally permissible only when reasonably  
5 related to legitimate governmental objectives, such as preventing flight risk or protecting the  
6 community. Here, continued detention achieves neither and, consistent with *Zadvydas v. Davis*,  
7 533 U.S. 678, 690 (2001), has ceased to serve a regulatory purpose and instead has become  
8 punitive and violates the Due Process Clause.

9 49. By classifying Petitioner’s custody as governed by INA § 235(b) pursuant to the  
10 Board’s interpretation in *Matter of Yajure-Hurtado*—which categorically eliminates Immigration  
11 Judge jurisdiction to conduct custody redeterminations for individuals DHS classifies under §  
12 1225(b)—Respondents have deprived Petitioner of any meaningful opportunity for an  
13 individualized custody determination. This deprivation violates the liberty interests protected by  
14 INA § 236(a) and the Due Process Clause of the Fifth Amendment.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Petitioner respectfully requests that this Court:

- 17 A) Assume jurisdiction over this matter;  
18 B) Direct Respondents to refrain from transferring Petitioner outside the jurisdiction of this  
19 District while these proceedings are pending;  
20 C) Issue an Order to Show Cause within three (3) days pursuant to 28 U.S.C. § 2243, requiring  
21 Respondents to explain the legal basis for Petitioner’s continued detention;  
22 D) Declare that Petitioner is not lawfully detained under INA § 235(b), and that, to the extent  
23 Petitioner remains in custody, such detention must proceed under INA § 236(a).  
24 E) Declare that, by depriving Petitioner of any meaningful opportunity to seek release, his  
25 continued detention violates the Immigration and Nationality Act and the Due Process Clause of  
26 the Fifth Amendment.

1 F) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately from  
2 custody, or, in the alternative, order an individualized bond hearing under INA § 236(a) before a  
3 neutral Immigration Judge consistent with *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006);

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

5 Respectfully submitted,

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

7 Alex Monsalve Law Firm, PC

8 240 Woodlawn Ave, Suite 9

9 Chula Vista, CA 91910

10 Phone: (619) 777-6796

11 Email: [info@alexmonsalvelawfirm.com](mailto:info@alexmonsalvelawfirm.com)

12 Counsel for Petitioner

13 Dated: December 9, 2025